

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**Case
8-CA-111398Date Filed
8/16/13**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer

UNIVERSITY HOSPITALS HEALTH SYSTEMS INC. (UH)

b. Tel. No. (b) (6), (b) (7)(C)

c. Cell No.

f. Fax No.

d. Address (Street, city, state, and ZIP code)

11100 EUCLID AVENUE
CLEVELAND, OHIO 44106

e. Employer Representative

(b) (6), (b) (7)(C)

g. e-Mail

h. Number of workers employed
1,000+

i. Type of Establishment (factory, mine, wholesaler, etc.)

HOSPITAL

j. Identify principal product or service

MEDICAL SERVICES

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (a) (2); (a) (3); (a) (5) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

SEE ATTACHMENT A

FILED
AUG 16 2013
CLEVELAND
NLRB

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18

4a. Address (Street and number, city, state, and ZIP code)

3515 PROSPECT AVENUE
CLEVELAND, OHIO 44115

4b. Tel. No. (216) 432-3138

4c. Cell No.

4d. Fax No. (216) 432-3135

4e. e-Mail

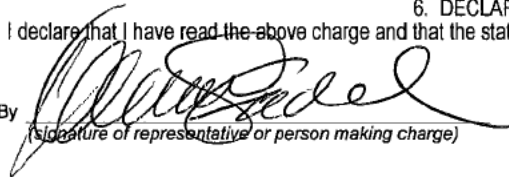
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

INTERNATIONAL UNION OF OPERATING ENGINEERS AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By



WILLIAM FADEL, GENERAL COUNSEL

(Print/type name and title or office, if any)

Tel. No. (216) 432-3138

Office, if any, Cell No.

Fax No. (216) 432-3135

e-Mail

Address 3515 PROSPECT AVENUE; CLEVELAND, OHIO 44115

08/16/2013

(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ATTACHMENT A

In August 2013 University Hospital Health Systems Inc., (UH) conspired with the Construction Employers Association (CEA) and its employer members, including Great Lakes Construction, Independence Excavating, Goettle, and Ruhlin Company, to negotiate a Project Labor Agreement (PLA) for the construction of Garage 59 with the Cleveland Building & Construction Trades Council (CBCTC) wherein the charging party was excluded, and the terms of the PLA provided that contractors are required to sign the PLA, which excluded charging party, and to be bound only to the signatory union's collective bargaining agreements. (Copy attached).

The CBCTC is acting in concert with the other named employers in attempting to dominate and interfere with the administration of charging party's collective bargaining agreement; discriminate against and prevent members of charging party from working on the project unless they disaffiliate their membership in charging party; the CBCTC is not a labor organization as defined under the Act and is not a recognized or certified bargaining representative for charging party or members of any labor organization, and are without legal authority to negotiate any collective bargaining agreement; the CBCTC by its actions is attempting to cause an employer to discriminate against employees with respect to their union membership and forcing or requiring employers to recognize and/or bargain with another labor organization as the representative of its employees without certification when it negotiated terms of the PLA to include only the collective bargaining agreements of the signatory unions which "shall supersede any other collective bargaining agreements to which a contractor may be signatory. The failure of a contractor to comply with the provisions of this Article shall be considered a material breach for which the Developer (UH) may terminate the contractor's contract."

COMMUNITY BENEFITS AGREEMENT FOR "GARAGE 59"

BY AND BETWEEN

UNIVERSITY HOSPITALS HEALTH SYSTEM, INC.

AND

**THE CLEVELAND BUILDING AND CONSTRUCTION TRADES
COUNCIL AND ITS AFFILIATES**

RECEIVED
SEP 12 2013
REGION 8

INTRODUCTION AND SCOPE

- A. This Community Benefits Agreement ("Agreement") is entered into this 6th day of August, 2013, by and between University Hospitals Health System, Inc. ("UHHS"), its successors or assigns (the "Developer"), and the Cleveland Building and Construction Trades Council ("CBCTC"), acting on its own behalf and on behalf of its affiliates (collectively, "Unions"), and the Construction Employers Association ("CEA"), acting on its own behalf, with respect to the construction of Garage 59 in Cleveland, Ohio ("Project)."
- B. The term "Contractors" shall collectively refer to and include all employers and entities, including but not limited to, construction contractors and subcontractors of whatever tier engaged only in on-site construction work with respect to the Project within the scope of this Agreement. On-site construction work shall include: (1) demolition, excavation, and other site preparation work; (2) the off-site prefabrication of any building materials, systems, signage, displays, and/or components traditionally performed on-site; (3) the transportation to the site of only ready mix concrete, aggregate, top soil, and fill; and (4) only the transportation off-site of demolition and excavation materials. This Agreement does not apply to work not owned or controlled by the Developer provided; however, that all on-site work for the Project covered in a participating union's collective bargaining agreement shall be protected by this Agreement to the same degree and scope as in the collective bargaining agreement listed in Attachment A. The Developer agrees that it shall not self-perform on-site construction work with respect to the Project with its own employees.

All Contractors who enter into contracts with the Developer for the Project or Contractors (of any tier) who enter into contracts with Contractors for the Project, shall be bound to each and every provision of this Agreement to the same extent and effect as if the Contractor was an original party to this Agreement. All Contractors shall acknowledge, in writing, the acceptance of this Agreement by executing the Acknowledgement, which is attached hereto as Attachment B. All Contractors acknowledge that the acceptance of a Contract of any tier to perform Work for the Project is an acceptance of the terms of this Agreement.

- B.1. Items specifically excluded from the scope of this Agreement are:

(a) Work by non-manual or professional employees, including but not limited to the Architect, Construction Manager, consultants, superintendents, supervisors (except foremen and general foremen), engineers, inspectors, quality control personnel, quality assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, emergency medical and first-aid technicians, and other professional, engineering, administrative, and management employees;

(b) Testing of equipment and machinery in the care, custody, and control of companies other than Contractors;

(c) Work that is not within the recognized jurisdiction of the Unions;

(d) Any work performed on, near, or leading to or into the Project site by governmental bodies and/or utilities or railroads;

(e) Inspection, commissioning, testing and/or balancing of any building systems;

(f) Any construction work which the Developer, its Construction Manager or its Contractors determine requires specialized work which cannot be readily and timely performed by the Unions (e.g. the installation MRI's, CT scanners, surgical lights, and similar items of medical equipment). The Developer shall timely notify the Unions of this determination which shall be subject to the provisions of Paragraph T of this Agreement;

(g) To the extent a warranty for equipment or a system will be voided or unavailable, an applicable regulation of a governing body will be violated, or a security requirement of the Developer will not be met by the delivery or installation of such equipment or system by a union Contractor, the Developer will not be required to use a union Contractor to perform such work. Before using a non-union contractor to perform such work, the Developer will discuss the work to be performed with the CBCTC, ask the CBCTC to identify Union contractors who can perform the work on a competitive basis and meet the Developer's concerns, and select in good faith the contractor which the Developer determines is best suited for the Project which shall be subject to the provisions of Paragraph T of this Agreement; and

(h) Any and all work which is traditionally performed by the Operating Engineers Local 18 in its current collective bargaining agreement to the extent that it is not traditionally performed under any of the collective bargaining agreements listed in Attachment A.

CONTRACTORS

- C. The Developer, the Contractors, and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction

and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craft workers for the construction of the Project.

- D. To maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement and to avoid workplace disruptions that may be caused by union and nonunion workers employed on the same jobsite, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise.
- E. Where there is a conflict, the terms and conditions of this Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Paragraphs K, L, M. M.1 and M.2, which shall apply to such work.
- F. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.
- G. Liability of any Contractor and the liability of the Unions shall be several and not joint.

DIVERSITY & INCLUSION

- H. A Memorandum of Understanding Regarding Community Benefits and Inclusion (the "MoU") was memorialized on February 26, 2013 with a goal of reframing the public discourse on economic development in Cleveland to encourage collaboration to fuel economic growth, harness that growth to create a more equitable and inclusive local economy and create shared prosperity. (A copy of the MoU is attached hereto as Attachment C.) In support of the MoU, the Project shall be performed subject to the following:

1) The Developer shall engage the Construction Diversity & Inclusion Committee or its designee to audit and report to the Developer compliance with the obligations set-forth below, and the Developer shall require the Contractor (of any tier) to provide to the Committee or its designee with certified monthly payroll reports and any other documentation necessary to verify compliance with the obligations set-forth below in paragraphs H.2 to H.7.

2) No Party to this Agreement shall intentionally discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, handicap, or age.

3) The Contractors employed on the Projects shall, in filling job vacancies, utilize the registration facilities and referral systems operated by the Unions in accordance with the provisions of the applicable federal and state laws. In addition to the other requirements set forth in this Agreement, the selection of applicants for work on the Covered Projects shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements.

4) Recognizing that the Unions have no control over the Developer's selection of Contractors, the Unions acknowledge and support the Developer's diversity goals of 15% Minority Business Enterprise, 7% Female Business Enterprise, and 8% Small Business Enterprise participation on this Project. The Construction Manager and Contractor will use commercially reasonable efforts to obtain bids from and recommend the award of trade contracts for fifteen percent (15%) of the combined aggregate value of its Cost of the Work of the Project and related vendor purchases to qualified State of Ohio, Cuyahoga County, or City of Cleveland certified MBE firms, seven percent (7%) of the combined aggregate value of its Cost of the Work of the Project and related vendor purchases to qualified State of Ohio, Cuyahoga County, or City of Cleveland certified FBE firms, and eight percent (8%) of the combined aggregate value of its Cost of the Work of the Project to qualified State of Ohio, Cuyahoga County, or City of Cleveland certified SBE firms in compliance with the terms and conditions of the Owner's MBE/FBE/SBE and Workforce Utilization Plan ("Diversity Goal").

5) The Unions acknowledge and support the Developer's desire to provide opportunity to small disadvantaged business enterprises, and agree to recognize mentor-protégé joint venture partnerships between certified small disadvantaged business enterprises (union or non-union) and Union Contractors which is equal or similar to the Contractors Assistance Association Mentor-Protégé Program (hereinafter "Bona Fide Mentor-Protégé Program"). Notwithstanding this or any other provision of this Agreement, the joint venture entity and/or Mentor Contractor will be required to be or become signatory to the appropriate collective bargaining agreement as set forth in Paragraph K below.

6) In accordance with the MoU, the Developer shall:

(a) pay all undisputed construction invoices to the Mentor-Protégé Joint Venture Partnership within 25 to 45 days of the Developer's receipt of a properly submitted and correct invoice;

(b) incorporate the following into project bid specification documents and contracts for construction contractors at every tier:

(1) workforce reporting (as set forth in Paragraph H.1 of this Agreement) and Workforce Goals (as set forth in Paragraph H.7 of this Agreement) by each

Contractor, subject to the Developer's contractual remedies;

- (2) Contractor and Sub-Contractor participation in a Bona Fide Mentor-Protégé Program, subject to the Developer's contractual remedies; and

(c) take reasonable steps to relax contractual retainage and performance bonding requirements for the Mentor-Protégé Joint Venture Partnership and the MBE/FBE/SBE Contractors.

7) In accordance with the MoU and the Fannie M. Lewis Cleveland Resident Employment Law (the "Fannie Lewis Law"), the Unions shall use good faith efforts to support contractors' maximization of local workers who reside in the city where the Project is located to meet or exceed the Project goals of having residents of the City of Cleveland perform 20% of the total Construction Worker Hours for the Project and of having Low Income Persons perform 4% of the total Construction Worker Hours for the Project as those terms are defined in the Fannie Lewis Law (hereinafter collectively referred to as "Workforce Goals").

8) Good faith efforts are defined by the Unions' authentic and engaged efforts with all Contractors, the Developer, and the Construction Diversity & Inclusion Committee or its designee to meet or exceed the Workforce Goals. Such good faith efforts will also include, if necessary, requesting assistance from other local unions or municipal agencies to recruit sufficiently skilled tradesmen and craftsmen to meet the Workforce Goals. The Unions shall use good faith efforts to work, coordinate, and cooperate with any and all bona fide pre-apprenticeship programs identified in the MoU together with the Cuyahoga Community College Adult Pre-Apprenticeship Program and the Bricklayers and Allied Craftworkers Pre-Apprenticeship Program and the Cement Masons Local 404 Pre-Apprenticeship Program in Cleveland, Ohio as preferred first-source referral sources for new apprentices to assist the Developer to achieve the Workforce Goals for the Project.

9) Contractors and Unions shall provide eligible graduates of the aforesaid pre-apprenticeship programs opportunities for apprenticeships as required to meet the above-referenced Workforce Goals.

10) When a Contractor's request for employees to meet the Developer's Workforce Goals cannot be or is not being met, the Developer shall have the right to direct the Contractor to employ new apprentices who have completed one of the pre-apprenticeship programs set forth in paragraph H.7 above to meet the Developer's goals. With respect to each construction trade working on the Project, Contractors shall utilize apprentices in amounts on a per-trade basis specified in each applicable collective bargaining agreement. The Contractors, however, shall retain the right to reject any applicant for

employment. The failure to meet the stated goals will not be considered a breach of this Agreement.

11) The Unions agree to comply with and fully cooperate with the Contractors in order to meet or exceed the Developer's Diversity and workforce goals. If a Contractor's existing workforce does not satisfy the Developer's Workforce Goals, the Contractor shall send a written request (via email or similar means) for a referral of City of Cleveland residents or low income persons to the appropriate craft union with whom the Contractor is signatory. The Unions shall use good faith efforts to comply with the written request within 72 hours of its receipt.

DRUG FREE WORKSITE

- I. The Parties agree that the Project will be a "drug-free" worksite. The Unions agree to comply with the Construction Industry Substance Abuse Program ("CISAP"), a copy of which is attached hereto and incorporated herein as Attachment D. The Unions further agree to cooperate with the Developer in its efforts to create a drug and alcohol free workplace.

HELMETS TO HARDHATS

- J. The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment ("Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties. The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

UNION RECOGNITION AND SUBCONTRACTING

- K. The Developer and the Unions shall require that all work by Contractors within the scope of this Agreement be performed by Contractors who are or become signatory to collective bargaining agreements with one or more appropriate craft unions listed in Attachment A. The Contractors shall confirm that this condition has been satisfied prior to the commencement of that Contractor's work on the Project.

WORK STOPPAGES AND LOCKOUTS

- L. During the term of this Agreement there shall be no strikes, sympathy strikes, jurisdictional strikes, picketing, work stoppages, slowdowns, or other disruptive activity for any reason by the Unions or by any employee for any reason including the performance of any work outside the scope of this Agreement, and there shall be no lockout by the Developer or any Contractor.
- M. If wage negotiations are scheduled during the course of the Project, the Contractors agree to abide by all the terms and conditions as may be negotiated by the Unions and their respective employer association and the Contractors agree to pay said wages to all employees working and employed by the Contractor and its subcontractors for the work, retroactive to the date said increase and wage adjustments become effective. Said payments shall be made within twenty-one (21) days of the date of the new collective bargaining agreement. The Unions shall permit all employees to continue to work for the Contractors and their subcontractors during the pendency of negotiations, and the Unions will further agree that there will be no work stoppages, strikes or interferences with the work during the course of said negotiations.
 - M.1. The Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing, or other disruptive activity at the Project and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities that interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge by the Contractor. If justifiably discharged for any of the foregoing reasons, the employee shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.
 - M.2. The parties hereto agree that time is of the essence to this Agreement and to all contracts relating to the construction of the Project. The parties further agree that any delay due to any disruption of or interference with any activity relating to the construction of the Project will result in irreparable harm for which there is no adequate remedy at law and that, in such case, an injunction should issue to enjoin any such disruption or interference and to compel resolution of such dispute pursuant to the Agreement's grievance and arbitration procedure. All parties agree that, in the event that a Union initiates or participates in a work stoppage, strike, picketing or other disruptive activity in violation of this Article or recognizes or supports the work stoppage, strike, picketing, or disruptive activity of another Union that is in violation of this Article, the Developer or Contractor will have the right to seek an immediate injunction from the appropriate court in Cuyahoga County, Ohio to enjoin such conduct.

EMERGENCY INJUNCTIVE RELIEF

- N. In the event of an alleged violation of the contractual commitments set forth in Paragraphs K, L and/or M of this Agreement, the aggrieved party shall not be required to resort to the normal settlement procedures. Instead, the aggrieved party shall have the right to enforce these commitments by seeking an immediate injunction in the Court of Common Pleas in Cuyahoga County, Ohio. The Parties hereby agree that in the case of a violation of Paragraphs K, L and/or M of this Agreement, the aggrieved party will have no adequate remedy at law, cannot be made whole by money damages, and will be irreparably harmed by the conduct. Furthermore, once the injunction has been issued, the aggrieved party shall retain the right to full legal and equitable relief, including appropriate financial damages against any violating party. Should a Contractor fail to pay any wages and/or employee benefits, the Contractor shall also be liable for interest, reasonable attorney fees and court costs, in addition to other remedies the Union and/or its related fringe benefit funds may have.

FRINGE BENEFIT CONTRIBUTIONS

- O. Except as otherwise provided in this Agreement, the wage and fringe benefit requirements in this Agreement shall apply to all employees employed by any Contractor of any tier, or any person who performs any portion of the construction work within the scope of this Agreement. Except as otherwise provided in this Agreement, all Contractors shall comply with the wage, benefit, trust fund and industry program requirements set forth in the applicable collective bargaining agreement(s) listed in *Attachment A*. While working on this Project, the collective bargaining agreements listed in Attachment A shall supersede any other collective bargaining agreements to which a Contractor may be signatory. The failure of a Contractor to comply with the provisions of this Article shall be considered a material breach for which the Developer may terminate the Contractor's contract.
- O.1. If a Fringe Benefit Trust Fund or a Union provides the Developer with written notice that one of the Contractors is delinquent in making benefit contributions for a period of at least fifteen (15) days after said contributions are payable for work performed on the Project, the Developer shall withhold the amount of any work-in-progress payments owed to said Contractor in an amount which is equal to or greater than the amount of said delinquency until the Fund or Union notifies the Developer that the benefit contributions have been paid and made current. The Developer's obligation is limited only to the amount of unpaid work-in-progress payments owed to the Contractor at the time the Fund or Union notifies it of any delinquent contributions, and the Developer assumes no liability for payments of delinquent benefit contributions. Any good faith dispute between the Fringe Benefit Trust Fund and a Contractor over the amount of money owed to the fund are not subject to the provisions of Paragraph O. The Fund or Union which asserts a deficiency pursuant to Paragraph O, agrees to hold harmless and indemnify the Developer from any and all liability, costs, and expenses incurred

by the Developer which arises in any fashion from the asserted deficiency and the Developer's actions taken in response to said assertion.

JURISDICTIONAL DISPUTES

- P. Each direct-hire Contractor of any tier shall conduct a jurisdictional pre-job meeting prior to the commencement of the work for the purpose of discussing the scope and schedule of the work and intended work assignments by the Unions and to confirm that the Contractor is signatory to the appropriate collective bargaining agreement with one or more craft unions listed in Attachment A. The Developer's representative shall have the right to participate in such meetings. Except in emergency situations, no Contractor may commence work without conducting the jurisdictional pre-job meeting. Following the pre-job meeting, crafts shall be given the opportunity to submit evidence in support of a claim to the work. The Contractor will make its final assignments to a particular Union or Unions in writing prior to the commencement of the work. The initial and final assignments are the sole responsibility of the Contractor performing the work involved.
- Q. All work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.
- R. All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and Contractors shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Union parties to this Agreement.
- S. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

DISPUTES AND GRIEVANCES

- T. Jurisdictional disputes shall be resolved in the manner provided above in this Agreement. Disputes arising under the terms of an individual Union's collective bargaining agreement must be resolved in the manner provided under the individual Union's collective bargaining agreement. All other disputes arising under the terms and/or application of this Agreement that require an interpretation of this Agreement, and which grievance is (a) not jurisdictional, (b) not covered by a Union's collective bargaining agreement, and (c) not covered by Paragraphs K, L, M, M.1, M.2 or N shall be resolved as set forth in Paragraph U.

- U. Any question or dispute arising out of and during the term of this Agreement (other than those described above) shall be considered a grievance and subject to resolution under the following procedures:

1) (a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor and the Developer shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Developer) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Local Union(s), the Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

2) The International Union Representative and the involved Contractor shall meet within seven (7) working days of the referral of a dispute of this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

3) (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the American Arbitration Association to provide them with a list of arbitrators from which the Arbitrator shall be selected. The rules of the American Arbitration Association shall govern the conduct of the arbitration hearing. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

4) The Developer shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

- V. It is not the intent of the parties to this Agreement to violate any Federal, State, or local laws governing the subject matter contained herein, and any final determination that any provision of this Agreement violates any law or is otherwise not binding and enforceable shall have no effect on the validity of the remaining provisions of the Agreement. All parties who are signatory to the terms of this Agreement agree that, if any of the provisions contained herein is finally held or determined to be illegal, unenforceable, not binding, or void by a court of final and competent jurisdiction, an effort will be made by the parties hereto to promptly enter into negotiations concerning the clauses affected by such decision for the purpose of achieving conformity with the requirements of any applicable law or conflicting law so violated.

AMENDMENT

No alterations, amendments, or modifications hereof shall be valid unless set forth in an instrument in writing executed by the parties with the same formality as this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified, or abandoned, in whole or in part, except by an instrument in writing executed by the parties, and no subsequent oral agreement shall have any validity whatsoever. The Developer shall furnish sufficient copies of such amendments or modifications to the other parties.

TERM OF AGREEMENT

This Agreement shall be effective as of the date hereinabove written, and shall remain in effect with respect to each Contractor until the date of final completion of that Contractor's work. Once the Developer accepts an area or system within the Project following completion of the work applicable thereto except for the performance of punch list work, the parties agree that the Developer is authorized to secure and occupy the area or use the system as the Developer deems appropriate without objection from any of the parties hereto.

PROJECT ACCESS

The Developer and each affected Contractor shall afford reasonable access to the Project site to duly authorized representatives of the Unions signatory to this Agreement, provided they do not interfere with the work of employees or the delivery of supplies, equipment, tools or materials to the Project, and provided they comply with job and safety rules established and posted by the Employer(s) and/or the Developer.

MONTHLY MEETINGS

In an effort to avoid unnecessary disputes, maintain harmony, and address any unanticipated matters related to this Agreement which may arise over the course of the Project, the Developer (or its nominee) shall convene, on a monthly basis, a meeting of all Contractors and Unions working or scheduled to work on the Project. The meetings shall provide a forum to discuss and resolve, in good faith, any present or anticipated issue related to this Agreement and endeavor to resolve same without resort to the provisions of Paragraphs N, O, and T of this Agreement.

SIGNATURES

The parties to this Agreement need not all sign on the same page. Signatures on separate pages and executed at different times will not affect the validity of the Agreement. Original signatures and signatures provided by facsimile are equally valid.

UHHS	Cleveland Building & Construction Trades Council
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____
Construction Employers Association	Bricklayers District Council
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____
Asbestos Workers #3	Cement Masons #404
By: _____	By: _____

Title: _____

Date: _____

Boilermakers #744

By: _____

Title: _____

Date: _____

Electrical Workers #38

By: _____

Title: _____

Date: _____

**Indiana / Kentucky / Ohio Regional
Council of Carpenters**

By: _____

Title: _____

Date: _____

Laborers #310

By: _____

Title: _____

Date: _____

Teamsters #436

By: _____

Title: _____

Date: _____

Pipefitters #120

Title: _____

Date: _____

Elevator Constructors #17

By: _____

Title: _____

Date: _____

Ironworkers #17

By: _____

Title: _____

Date: _____

Laborers #860

By: _____

Title: _____

Date: _____

Painters District Council

By: _____

Title: _____

Date: _____

Plasterers #80

By: _____

Title: _____

Date: _____

Roofers & Waterproofers #44

By: _____

Title: _____

Date: _____

Plumbers #55

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Sheetmetal Workers #33

ATTACHMENT A

Collective Bargaining Agreement

Expiration Date

ATTACHMENT B

**ACKNOWLEDGMENT OF ASSENT TO THE
COMMUNITY BENEFITS AGREEMENT FOR GARAGE 59
BY AND BETWEEN UNIVERSITY HOSPITAL HEALTH SYSTEM, INC.
AND THE CLEVELAND BUILDING AND CONSTRUCTION TRADES
COUNCIL AND ITS AFFILIATES**

Pursuant to Paragraph B of the Community Benefits Agreement (the "Agreement") for _____ described in the Agreement, the undersigned party hereby agrees that it will comply with and be bound by all of the terms and conditions of the Agreement and agrees to all approved amendments or revisions thereto.

This Letter of Assent shall remain in effect for the duration of the above-referenced Project after which this understanding will automatically terminate without further notice.

For the Contractor (or Subcontractor of whatever tier):

Name of Contractor/Subcontractor: _____

Name and Signature of Authorized Person:

(Print Name) _____

(Title) _____

(Signature) _____

(Phone #) _____

(Date) _____

Summary Report

August 07, 2013 9:09 AM

	Document	Location
Original	UHHS Community Benefits Agreement v3	7711518\3
Revised	UHHS Community Benefits Agreement v4	7711518\4

Change Summary

	Number of Changes	Markup Format
Insertions	21	Sample Text
Deletions	26	
Moved from	0	
Moved to	0	Sample Text
Formatting	0	Sample Text
Total	47	



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 8
1240 E 9TH ST
STE 1695
CLEVELAND, OH 44199-2086

Agency Website: www.nlr.gov
Telephone: (216)522-3715
Fax: (216)522-2418

August 19, 2013

(b) (6), (b) (7)(C)

University Hospitals Health Systems Inc. (UH)
11100 Euclid Avenue
Cleveland, OH 44106

Re: University Hospitals Health Systems Inc.
(UH)
Case 08-CA-111398

Dear

(b) (6), (b) (7)(C)

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney SHARLEE CENDROSKY whose telephone number is (216)522-8191. If this Board agent is not available, you may contact Supervisory Attorney IVA Y. CHOE whose telephone number is (216)522-3719.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

August 19, 2013

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

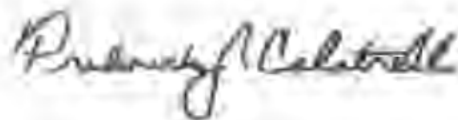
We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



Frederick J. Calatrello
Regional Director

:cjc

August 19, 2013

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

[REDACTED]

[REDACTED]

[REDACTED]

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

University Hospitals Health Systems Inc. (UH)

CASE NUMBER

08-CA-111398

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)**2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates)**YES NO**A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (Check the largest amount)
☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: _____**10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**UNIVERSITY HOSPITALS HEALTH SYSTEMS
INC. (UH)**

Charged Party

and

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18**

Charging Party

Case 08-CA-111398

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on August 19, 2013, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

(b) (6), (b) (7)(C)

University Hospitals Health Systems Inc.

(UH)

11100 Euclid Avenue

Cleveland, OH 44106

August 19, 2013

Date

Cynthia Clark, Designated Agent of NLRB

Name

/s/ Cynthia Clark

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 8
1240 E 9TH ST
STE 1695
CLEVELAND, OH 44199-2086

Agency Website: www.nlrb.gov
Telephone: (216)522-3715
Fax: (216)522-2418

August 19, 2013

WILLIAM FADEL, GENERAL COUNSEL
INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18 (AFL-CIO)
3515 PROSPECT AVE E
CLEVELAND, OH 44115-2648

Re: Cleveland Building & Construction Trades Council (CBCTC)
Case 08-CA-111393

Construction Employers Association (CEA)
Case No. 08-CA-111394

Goettle Equipment Company
Case No. 08-CA-111395

The Great Lakes Construction Company
Case No. 08-CA-111396

The Ruhlin Company
Case No. 08-CA-111397

University Hospitals Health Systems Inc. (UH)
Case No. 08-CA-111398

Independence Excavating, Inc.
Case No. 08-CA-111399

Dear Mr. Fadel:

The charges that you filed in the above cases on August 16, 2013 have been docketed as case numbers 08-CA-111393, 08-CA-111394, 08-CA-111395, 08-CA-111396, 08-CA-111397, 08-CA-111398, and 08-CA-111399. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

August 19, 2013

Investigator: These charges are being investigated by Field Attorney SHARLEE CENDROSKY whose telephone number is (216)522-8191. If the Board agent is not available, you may contact Supervisory Attorney IVA Y. CHOE whose telephone number is (216)522-3719.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in these cases, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding these proceedings was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charges in these cases, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

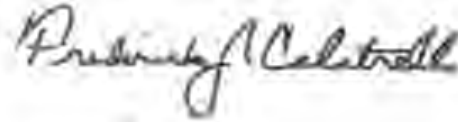
Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case names and numbers indicated above on all your correspondence regarding these charges.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlr.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

August 19, 2013

Very truly yours,

A handwritten signature in dark ink, appearing to read "Frederick J. Calatrello". The signature is written in a cursive style with a large, stylized "F" and "C".

Frederick J. Calatrello
Regional Director

:cjc

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

International Union of Operating Engineers, Local 18

and

University Hospitals Health System, Inc.

CASE 8-CA-111398

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____
University Hospitals Health System, Inc.

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☐ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Raymond Krncevic, Esq.

MAILING ADDRESS: 3605 Warrensville Center Road, Shaker Heights, Ohio 44122

E-MAIL ADDRESS: raymond.krncevic@uhhospitals.org

OFFICE TELEPHONE NUMBER: (216) 767-8513

CELL PHONE NUMBER: _____ FAX: (216) 767-8262

SIGNATURE: _____

(Please sign in ink.)

DATE: _____

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE

.

From: [REDACTED]
Sent: Thursday, October 24, 2013 12:13 PM
To: 'Raymond.krncevic@uhhospitals.org'
Subject: University Hospitals Case No. 08-CA-111398
Attachments: Local 18 University Hospital's letter

Mr. Krncevic,

Attached please find a letter requesting a statement of position in the above referenced case. A hard copy was placed in the mail today.

Sharlee Cendrosky



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 8

1240 East 9th Street - Room 1695

Cleveland, OH 44199-2086

Telephone: (216) 522-3715

Fax: (216) 522-2418

www.nlrb.gov

Via e-mail Raymond.krncevic@uhhospitals.org
And regular US mail

October 24, 2013

Raymond Krncevic, Esq.
3605 Warrensville Center Road
Shaker Heights, Ohio 44122

RE: University Hospitals Health Systems, Inc.
Case No. 08-CA-111398

Mr. Krncevic:

As you are aware, the above charge filed by the International Union of Operating Engineers, Local 18, alleges that University Hospitals Health Systems, Inc. (University Hospitals) violated Section 8(a)(1) (2) (3) and (5)¹ of the Act by conspiring with the Construction Employers Association and a number of its members to negotiate a Project Labor Agreement (later referred to as a Community Benefits Agreement and denoted as "Garage 59 Agreement") with the CBCTC wherein Local 18 was excluded and the terms of the Garage 59 Agreement provide that contractors are required to sign the Agreement (which excluded Local 18) and to be bound only to the signatory union's collective bargaining agreement.

Local 18 alleges that the CBCTC is an alliance of craft unions that provides coordination and support to the work of its affiliated unions to which Local 18 is a member. The CBCTC employ's both secretarial and administrative employees. The CBCTC is headed by (b) (6), (b) (7)(C) who also serves as the (b) (6), (b) (7)(C) of the Laborer's International Union of North America, Local 310 (Local 310).

Local 18 alleges that the Construction Employer's Association (CEA) is a multi-employer bargaining association for construction companies operating in and around Cleveland, Ohio. Local 18 negotiated a contract with the CEA governing the terms and conditions of employment for its members including that forklifts and skid-steers as construction equipment within Local 18's contractual and craft jurisdiction. That agreement contains a work preservation clause that mandates an economic sanction in the event any piece of equipment identified in Local 18's agreement is assigned to someone other than an operating engineer.

¹ The charging party has not presented any evidence or argument with respect to the 8(a)(5) allegation.

In addition to negotiating a building construction agreement with Local 18, Local 18 alleges that the CEA also negotiated a separate agreement with other labor organizations including affiliates of Laborer's Local International Union of North America. For construction work performed in and around Cleveland, Ohio, the CEA directly negotiates with Local 310.

In the spring and summer of 2011, Local 18 and the CEA were engaged in negotiations the culminated in an agreement between the parties. At the same time that the CEA was engaged in these negotiations with Local 18, the CEA was also negotiating a new contract with Local 310. Eventually these negotiations resulted in the parties agreeing to a new agreement that included language assigning equipment to the Laborer's that was previously solely within the purview of Local 18 equipment including forklifts and skid steers. Local 18 alleges that the CEA pitted the union's against each other to force the parties into 10k hearings. As a result of the CEA's actions, Local 18 filed approximately 15 grievances.

Local 18 alleges that in retaliation for Local 18's decision to pursue and continue to pursue grievances that arise under its work preservation clause, the CEA, Donley's, the CBCTC and Local 310 conspired to develop a way to eliminate Local 18 from participating in the construction industry in Northeast Ohio. To this end, the parties by and through the CBCTC developed and signed a February 26, 2013, Memorandum of Understanding (MOU) that is nothing more than pretext for excluding Local 18 and its members from construction projects in Northeast Ohio. Under the terms of the MOU, signatory construction developers including University Hospitals and others agreed to support the CEA and developers agreed that they would only contract with construction companies that have adopted the terms of the MOU or that have signed a Community Benefits Agreement that specifically adopts the MOU.

Local 18 alleges that in August of 2013, the CEA, CBCTC and University Hospitals negotiated and entered into a Community Benefits Agreement (Garage 59 Agreement) governing construction work performed by Donley's on University Hospitals' Garage 59. Under the Garage 59 Agreement, University Hospitals mandated that any and all contractor's performing work on the project must use each respective union's hiring hall and referral system to fill any job vacancy.

Local 18 alleges that despite the fact that Local 18 members work for CEA contractors, the CEA elected to exclude Local 18 from any negotiations relating to both the MOU and the Garage 59 Agreement and instead, CEA, Donely's and the CBCTC excluded Local 18 from performing any work.

Local 18 alleges that on June 25, 2013, Local 18 received an e-mail from (b) (6), (b) (7)(C) of the CBCTC which included a draft copy of the proposed Garage 59 Agreement. Thereafter on August 10, 2013, Local 18 received a copy of the Garage 59 Agreement from (b) (6), (b) (7)(C) stating that the Garage 59 Agreement was finalized and ready for signature.

Local 18 submitted a copy of the Garage 59 Agreement and alleges as follows. The Garage 59 Agreement² provides that it was entered into on August 6, 2013 by and between University Hospitals, CBCTC (acting on its own behalf and on behalf of its affiliate unions) and the CEA. It further provided that that while working on this projects, the CBA's listed in attachment A (CEA Book Agreements) shall supersede any other CBA's to which a contractor may be signatory. If a contractor is not signatory to these agreements, University Hospitals could terminate their contract.

As noted by Local 18, under paragraph (h) B.1 – Items Specifically Excluded from the scope of the agreement are

“ Any and all work which is traditionally performed by the Operating Engineers Local 18 in its current collective bargaining agreement to the extent that it is not traditionally performed under any of the collective bargaining agreements listed in Attachment A.”

Local 18 alleges that the University Hospitals, by entering into the Garage 59 Agreement, interfered with, restrained and coerced Local 18's members in the exercise of their right's to join, assist, bargain collectively and engage in collective action through a representative of their choosing. By excluding Local 18 from the job, University Hospitals is communicating that Local 18 members would be better off without Local 18 functioning as their representative. Further, Local 18 alleges that the Garage 59 Agreement discriminates with regard to hire and tenure and discourages membership in Local 18.

Local 18 alleges that the (b) (6), (b) (7)(C) of the CBCTC, (b) (6), (b) (7)(C), entered into this agreement to the benefit of the Local 18 to which (b) (6), (b) (7)(C) is a (b) (6), (b) (7)(C). Local 18 alleges that (b) (6), (b) (7)(C) unlawfully dominated, and interfered with the administration of Local 18 and provided aid and assistance to Local 310 as any employee operating equipment on the Garage 59 job are required to pay dues to the Laborer's Local Union. Further, Local 18 alleges that University Hospital's asked (b) (6), (b) (7)(C) to donate to a fundraiser³ for University Hospital.

I am requesting that University Hospitals provide a detailed written account of the facts and a statement of position concerning the alleged allegations, including any applicable legal arguments and supporting case law. If you wish to present witnesses, arrangements must be made for a mutually agreeable appointment to take place on or before Wednesday October 30, 2013. The written position statement, including the above-requested documentation and any affidavits, should be received in this office no later than the close of business on **Wednesday, November 6, 2013**. Should you have any questions or concerns feel free to contact me at the number listed below.

Very truly yours
Sharlee Cendrosky
Field Attorney
216-522-8191

² The agreement provided to the Region is unsigned.

³ The alleged donation was to be a motorcycle or truck.

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From: (b) (6), (b) (7)(C) @UHhospitals.org> on behalf of Krncevic, Raymond
<Raymond.Krncevic@uhhospitals.org>
Sent: Wednesday, November 6, 2013 12:53 PM
To: Cendrosky, Sharlee
Cc: Krncevic, Raymond
Subject: International Union of Operating Engineers, Local 18 and University Hospitals Health System, Inc.
Attachments: UH Statement of Position - Garage 59 ULP.PDF

Dear Ms. Cendrosky,

Please find attached correspondence regarding the above referenced matter. Please confirm receipt of this email and attachment.

Thank you,

(b) (6), (b) (7)(C)



Visit us at www.UHhospitals.org.

The enclosed information is STRICTLY CONFIDENTIAL and is intended for the use of the addressee only. University Hospitals and its affiliates disclaim any responsibility for unauthorized disclosure of this information to anyone other than the addressee.

Federal and Ohio law protect patient medical information, including psychiatric_disorders, (H.I.V) test results, A.I.Ds-related conditions, alcohol, and/or drug_dependence or abuse disclosed in this email. Federal regulation (42 CFR Part 2) and Ohio Revised Code section 5122.31 and 3701.243 prohibit disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law.



Raymond Krncevic
Associate General Counsel

Claims & Litigation Services
Management Services Center
3605 Warrensville Center Rd., LL 9115
Shaker Heights, Ohio 44122
216-767- 8513 Phone
216-767-8262 Fax

VIA E-MAIL

November 6, 2013

Ms. Sharlee Cendrosky
Field Attorney
NLRB, Region 8
1240 East 9th St., Room 1695
Cleveland, Ohio 44199
Sharlee.Cendrosky@nrlb.gov

Re: International Union of Operating Engineers, Local 18 and University Hospitals
Health System, Inc.
Case: 8-CA-111398

Dear Ms. Cendrosky:

Pursuant to your request of October 24, 2013, University Hospitals Health System, Inc. ("UH") hereby submits its statement of position in regard to the above-referenced case. As explained below, this unfair labor practice charge made by Operating Engineers Local 18 is without merit: it has no basis in law and rests on numerous factual inaccuracies. UH asks for its dismissal as to all charged parties.

First, there is no legal basis for subjecting UH to an unfair labor practice charge in this case, because UH is not an "employer" as defined by the National Labor Relations Act ("the Act"). UH does not employ anyone who is a member of Local 18, Local 310 or any other union who has membership within the Cleveland Building and Construction Trades Council ("CBCTC"). UH also does not employ anyone who performs work similar to that done by the members of these bargaining units, nor does UH have any employer-employee relationship with any member of any bargaining unit relevant to this action. Further, UH does not have any ownership interest in the Construction Employer's Association ("CEA"), in any of the companies represented by the CEA, or in any other company employing members of these unions. Many of these union members work for contractors who may, in the near future, be retained by UH for performing construction services on its property, but UH cannot be construed as an "employer" for purposes of this case.

Next, the Act does not recognize "conspiracy" as an unfair labor practice. Either a party commits an unfair labor practice or it does not, but it cannot be sanctioned for conspiracy to commit one. The fact that Local 18 makes allegations of conspiracy is telling: it is indicative of the fact that no one has done anything to violate the Act.

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•

BC

(b) (6), (b) (7)(C)

Respectfully submitted,



Raymond Krncevic

(b) (6), (b) (7)

EXHIBIT 1

**MEMORANDUM OF UNDERSTANDING
REGARDING COMMUNITY BENEFITS AND INCLUSION**

This Memorandum of Understanding ("MOU"), dated February 26, 2013, is among the Construction Employers Association ("CEA"), Black Contractors Group, Hispanic Roundtable, Hard Hatted Women ("HHW"), the Urban League of Greater Cleveland ("ULGC"), Greater Cleveland Partnership ("GCP"), the City of Cleveland ("City"), Cuyahoga Community College ("Tri-C"), the Cleveland Metropolitan School District ("CMSD"), and the Cleveland Building and Construction Trades Council ("CBCTC") (collectively, the "Parties").

With a goal of reframing the public discourse on economic development in Cleveland to encourage collaboration to fuel economic growth, harness that growth to create a more equitable and inclusive local economy and create shared prosperity, the Parties agree as follows:

1. **Demand Driven Workforce Study**—The Parties will use their good-faith efforts to raise funds for a study of public and private sector real estate owners, developers, contractors, subcontractors, and others to determine near- and long-term demand for construction tradespersons (by trade discipline), construction administration and technology personnel (e.g., construction office, secretarial, accounting, safety, CAD, and support), and facilities maintenance personnel. This demand study will provide the basis for future pre-apprenticeship, apprenticeship, and other training in the Northeast Ohio area's high schools, community colleges, and workforce training programs. The Parties will consult with the Governor's office, Team NEO, GCP, foundations, and other parties that can support this important research effort.
2. **Pre-Apprenticeship and School-To-Registered-Apprenticeship Programs**—
 - a. Following completion of the workforce demand study and based upon its findings, the Parties, through CEA, will hire a qualified third-party (e.g., the Ohio State University College of Education and Human Ecology) to design a curriculum and high-school course of study for persons seeking careers in the trades, construction administration/technology, and facilities management.

The selected third-party will design the curriculum for review and approval by CMSD, Ohio Department of Education, Ohio State Apprenticeship Council, Tri-C, and/or other necessary approving authorities for high

school, pre-apprenticeship, and school-to-registered-apprenticeship curricula.

b. Once the Parties and necessary approving authorities have approved the curricula and course of study:

i. **Adult Pre-Apprenticeship Program**— The Parties will take reasonable and necessary steps to obtain approval for an adult pre-apprenticeship program operated by one or more qualified administrators or an administrative collaboration comprised of organizations such as the ULGC, Helmets to Hardhats, HHW, Cleveland Job Corps, Esperanza, Tri-C and/or Union Construction Industry Partnership-Apprenticeship Skill Achievement Program ("UCIP-ASAP").

ii. **High School School-to-Apprenticeship Program**— The Parties will assist CMSD in forming and operating a new high school school-to-registered-apprenticeship program. Assistance will include:

1. provision of industry-specific training, as need and funding permit;
2. facilitated staffing of industry-specific volunteer working committees within CMSD; and
3. provision of technical advice to CMSD regarding the program's structure, formation, and process of complying with and/or gaining recognition from the Ohio Department of Education and the Ohio State Apprenticeship Council.

iii. CMSD shall implement the school-to-registered-apprenticeship program at Max Hayes and other high schools by formally adopting the curriculum and courses of study and through articulation agreements with Tri-C and others, including, but not limited to, interested union apprenticeship training councils.

iv. Once the pre-apprentice programs described in paragraphs 2(b)(i) and (ii) are formed and operational, the Parties shall take reasonable and necessary steps to designate them, along with UCIP-ASAP to the extent it remains a stand-alone program, as preferred first-source pre-apprenticeship programs.

3. **Funding**— The demand study and program development services described in paragraphs 1 and 2(a) will be obtained through outside funding. GCP shall work in conjunction with the other Parties to mobilize funding for these items. The Committee (as defined in paragraph 7(a) hereinbelow), working within the framework of the GCP Commission on Economic Inclusion ("GCP/Commission"), shall apply for and receive the outside funding.

4. **Workforce Reporting**—

- a. The Parties shall use good-faith efforts to encourage private owners and developers of major construction and development projects ("Major Projects") to enter into community benefits agreements ("CBAs") with their contractors and appropriate constituency organizations relevant to the Major Project that include reporting of workforce information to the Committee (as defined in paragraph 7(a) hereinbelow). Within ninety days of the date of this MOU, the Committee shall determine the project-size threshold for defining a Major Project, as that phrase is used in this MOU. At least yearly, the Committee will review and determine whether to change the project-size threshold.
- b. The Parties' goal is that the private owners and developers will use CBAs that contain provisions requiring contractors (and the contractors' subcontractors) working on the Major Projects to report project-size information and certain monthly payroll information to the private owner/developer and the Committee. In that regard, the Parties shall use good-faith efforts to encourage inclusion of these paragraph 4 reporting requirements in the project-specific CBAs.
- c. The information to be reported monthly should include:
 - i. the number and percentage of all construction worksite hours performed by Cleveland residents;
 - ii. the number and percentage of all construction worksite hours performed by low-income persons who are Cleveland residents (with low-income status determined by reference to relevant guidelines established by the United States Department of Housing and Urban Development);
 - iii. the number and percentage of all work hours performed by minorities, broken out by race;
 - iv. the number and percentage of all work hours performed by women;

- v. usage of minority business enterprises, including, without limitation, the value of all contracts performed by minority business enterprises and the percentage of the total project cost represented by the value of the contracts performed by minority business enterprises;
- vi. usage of female business enterprises, including, without limitation, the value of all contracts performed by female business enterprises and the percentage of the total project cost represented by the value of the contracts performed by female business enterprises; and
- vii. apprenticeship utilization per trade, broken out by race and gender.

The Committee shall review from time to time the type of workforce information that it wishes to have reported.

- d. The Parties' goal is for the collected workforce data to be available to the public. The GCP/Commission shall develop the standards and guidelines under which the workforce data reported to the Committee will be made available to the public.
- e. GCP hereby expressly endorses the use of CBAs and the reporting of workforce data on Major Projects as defined herein. In that regard, GCP will require the use of CBAs and the above-referenced reporting as a condition of funding from Cleveland Development Advisors for any Major Project.

5. Mentor Protégé; MBE/FBE/SBE Contracting; Residential Workforce—

- a. Working together, the Parties shall use good-faith efforts to obtain the commitment of owners/developers, contractors, subcontractors, and design professionals to provide mentor-protégé and contract opportunities for MBE, FBE, and SBE contractors, design professionals, and others as determined by the owner/developer. The aspirational goals of the Parties are 15% MBE, 7% FBE, 8% SBE, and, for projects in the City of Cleveland, 20% Cleveland residents.

- b. When a private owner/developer establishes contracting goals for minority, female, or resident contractors, the Parties shall use good-faith efforts to secure the private owner/developer's commitment to:
 - i. pay all undisputed construction invoices within 30 days of the private owner/developer's receipt of a properly-submitted and correct invoice;
 - ii. incorporate the following into project bid specification documents and contracts for construction contractors at every tier:
 - 1. workforce reporting (as set forth in paragraph 4 of this MOU) by each prime contractor, in a manner that will be enforceable through the private owner/developer's contractual remedies;
 - 2. contractor and sub-contractor participation in a bona fide mentor-protégé program, in a manner that will be enforceable through the private owner/developer's contractual remedies; and
 - iii. take reasonable steps to relax contractual retainage and performance bonding requirements to assist MBE/FBE/SBE contractors.

6. Assistance to Contractors; Apprenticeship; and Pre-Apprenticeship Utilization—

- a. The Parties agree to use good-faith efforts to encourage private owners/developers of Major Projects to incorporate the following concepts into their CBAs:
 - i. Designation of the CMSD high-school-to-apprenticeship programs referenced in paragraph 2(b)(ii), the adult pre-apprenticeship programs referenced in paragraph 2(b)(i), and any other programs approved by the Committee (as defined in paragraph 7(a) hereinbelow) as preferred first-source pre-apprenticeship programs.
 - ii. When a contractor's request for employees to meet the private owner/developer's goals for minority, female, or resident employees cannot be or is not being met, or as otherwise required to meet the terms, conditions, and goals of this MOU, the private owner/developer shall have the right to direct the contractor to employ new apprentices who have completed one of the

pre-apprenticeship programs described in paragraph 2(b) above to meet the private owner/developer's goals or the terms, conditions, and goals of this MOU.

- iii. Requiring the contractor to provide eligible pre-apprentices the opportunities for apprenticeships as required to meet the terms, conditions, and goals of this MOU.
 - iv. With respect to each construction trade working on the Major Project, requiring contractors to utilize apprentices in amounts developed on a per-trade basis to fit the unique needs and circumstances of the Major Project. (The Parties note that the Ohio State Apprenticeship Council sets ratios of journeypersons to apprentices in the apprenticeship standards of apprenticeship programs registered with it, which may be consulted relative to the circumstance above.)
- b. CEA shall work with the pre-apprenticeship groups identified in paragraph 2(b) hereinabove and their respective registered apprenticeship programs to meet the goals of this MOU.
 - c. The Parties agree to use good faith efforts to encourage private owners/developers of Major Projects to work with qualified apprenticeship training organizations to meet the goals of this MOU.
 - d. At least quarterly, the Committee shall meet to evaluate compliance with the terms and conditions of this paragraph 6.

7. Construction Diversity & Inclusion Committee—

- a. The GCP/Commission shall form and facilitate a committee to monitor diversity and inclusion in the construction industry (the "Committee"). The Committee shall include representatives of each Party, other non-CBCTC unions signatory to CBAs, and others designated by the GCP/Commission, including other non-GCP private owners and developers signatory to CBAs.
- b. The Committee shall meet not less than quarterly and shall:
 - i. Review the data gathered pursuant to paragraph 4 of this MOU;

- ii. Discuss, agree upon and publish recommended best practices for improving diversity and inclusion in construction, such as:
 - 1. Workforce affirmative action measures to meet future market demand;
 - 2. Community benefit agreement terms to assist project owners and developers and small, minority, and female contractor businesses;
 - 3. Transparency; and
 - 4. Challenges faced by project owners/developers and contractors.
 - iii. Discuss and agree upon metrics from which the GCP/Commission shall publish an annual report card for Major Projects, participating owners/developers, and participating contractors.
 - iv. Monitor and assess pre-apprenticeship supply and demand as defined in the demand study set forth in paragraph 1 as well as similar demand studies in the future. The Committee also shall monitor and assess the progress of the pre-apprenticeship utilization efforts outlined in this MOU.
8. **Term and Termination**— Any Party may terminate its agreement to be bound by this MOU upon not less than thirty (30) days' written notice to all other Parties who, at the time of such notice, are still bound by this MOU.
9. **Signatures**— The parties to this MOU need not all sign on the same page. Signatures on separate pages and executed at different times will not affect the validity of the MOU. Original signatures and signatures provided by facsimile are equally valid.

[Signatures on next page]

CITY OF CLEVELAND, OHIO

Printed Name: Frank Taylor

Title: City Councilman

Date: 2-22-13

CLEVELAND METROPOLITAN
SCHOOL DISTRICT

Printed Name: Eric S. Graham

Title: Chief Executive Officer

Date: 2/22/13

GREATER CLEVELAND PARTNERSHIP

Printed Name: Eddie Taylor

Title: CEO

Date: 2/20/13

URBAN LEAGUE OF GREATER
CLEVELAND

Printed Name: MARSHA MCKAY

Title: President

Date: 2/20/13

CONSTRUCTION EMPLOYERS
ASSOCIATION

Printed Name: Tony Ponzio

Title: President

Date: 2/20/13

HISPANIC ROUNDTABLE

Printed Name: Jose Meliciano

Title: President

Date: 2/20/13

CUYAHOGA COMMUNITY COLLEGE

Printed Name: Robert A. Verhoff

Title: Director of Construction Program

Date: 2/26/2013

HARD HATTED WOMEN

Printed Name: Lea B. Sandu

Title: President

Date: 2.25.13

CLEVELAND BUILDING AND
CONSTRUCTION

Printed Name: (b) (6), (b) (7)(C)

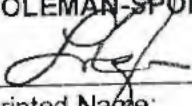
Title: (b) (6), (b) (7)(C)

Date: (b) (6), (b) (7)(C)

ENDORSEMENTS

We, the undersigned African-American contractors, wholeheartedly endorse the terms and goals of the foregoing Memorandum of Understanding dated February 26, 2013.

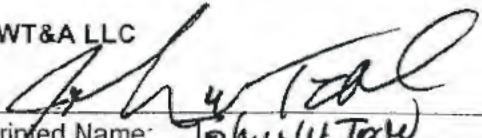
COLEMAN-SPOHN CORPORATION


Printed Name: _____

Title: _____

Date: 3-13-2013

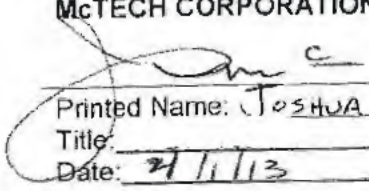
JWT&A LLC


Printed Name: John W Teal

Title: President

Date: 3/19/2013


McTECH CORPORATION


Printed Name: JOSHUA PERKINS

Title: _____

Date: 3/11/13

OZANNE CONSTRUCTION COMPANY


Printed Name: Ozzie Ozzie

Title: CEO

Date: 3/14/13



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 8
1240 E 9TH ST
STE 1695
CLEVELAND, OH 44199-2086

Agency Website: www.nlrb.gov
Telephone: (216)522-3715
Fax: (216)522-2418

December 27, 2013

WILLIAM FADEL, GENERAL COUNSEL
INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18 (AFL-CIO)
3515 PROSPECT AVE E
CLEVELAND, OH 44115-2648

Re: Cleveland Building & Construction Trades
Council (CBCTC)
Case 08-CA-111393

Construction Employers Association (CEA)
Case 08-CA-111394

Goettle Equipment Company
Case 08-CA-111395

The Ruhlin Company
Case 08-CA-111397

University Hospitals Health Systems Inc.
(UH)
Case 08-CA-111398

Independence Excavating, Inc.
Case 08-CA-111399

Dear Mr. Fadel:

We have carefully investigated and considered your charges that Cleveland Building and Construction Trades Council, Independence Excavating Inc., University Hospitals Health Systems Inc. (UH), The Ruhlin Company, Goettle Equipment Company and Construction Employers Association have violated the National Labor Relations Act.

Decision to Dismiss: The charges allege that the Construction Employers Association (the CEA) (Case 08-CA-111394), and its employer members including, Independence Excavating (Case 08-CA-111399), Goettle Equipment (Case 08-CA-111395), and the Ruhlin Company (Case 08-CA-111397), as well as University Hospitals (Case 08-CA-111398), have violated Section 8(a)(1) (2) (3) and (5) of the Act by negotiating a project labor agreement (PLA) with the Cleveland Building and Construction Trades Council (CBT) (Case 08-CA-111393) for the construction of Garage 59 wherein Local 18 was excluded. The charges further allege that the CBT is acting in

concert with the named employers in attempting to: (1) dominate and interfere with the administration of Local 18's collective bargaining agreements; (2) discriminate against and prevent members of Local 18 from working on the project unless they disaffiliate with Local 18; (3) discriminate against Local 18 employees with respect to their membership; and (4) force or require employers to recognize and/or bargain with another labor organization as a representative when it negotiated the terms of the PLA to include only those collective bargaining agreements of the signatory unions.

With regard to the charge filed against CBT in Case 08-CA-111393, the evidence showed that the CBT is not an employer under the Act, but a labor organization that employs two individuals, one of whom is a manager and the other being a confidential employee. Thus, under the Act, CBT is not a statutory employer. The investigation further showed that the alleged conduct was performed by CBT in its capacity as a labor organization, not as an employer. In sum, the Board does not have jurisdiction over CBT as an employer.

Next, the investigation revealed that with regard to the charge filed against the CEA in Case 08-CA-111394 and its employer members Independence Excavating (Case 08-CA-111399), Goettle Equipment (Case 08-CA-111395), and the Ruhlin Company (Case 08-CA-111397), when the CEA and its employer members learned of the exclusionary language, it removed its name as a party from the introduction and signature pages of the PLA. In that regard, any wrongdoing by the CEA was cured as the agreement naming the CEA as a party was never executed.

Finally, with regard to the charges filed against the CBT (Case 08-CA-111393) and University Hospitals (UH) (Case 08-CA-111398), the language in the PLA that is alleged to exclude the Charging Party Union, both the CBT and University Hospitals have agreed to remove that language from the final draft of the PLA. The investigation established that no executed version of the PLA included language excluding the Charging Party Union and, to the contrary, the final version of the PLA will not include any such exclusionary language. As a result, no violation of the Act has been established.

I am, therefore, refusing to issue complaint in these matters.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th**

December 27, 2013

Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **January 10, 2014**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than January 9, 2014. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before January 10, 2014**. The request may be filed electronically through the ***E-File Documents*** link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after January 10, 2014, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ Frederick J. Calatrello

FREDERICK J. CALATRELLO
Regional Director

FJC/skb

Enclosure

December 27, 2013

cc: (b) (6), (b) (7)(C)
CLEVELAND BUILDING AND
CONSTRUCTION TRADES COUNCIL
3250 EUCLID AVE
CLEVELAND, OH 44115-2529

(b) (6), (b) (7)(C)
GOLDSTEIN GRAGEL LLC
526 SUPERIOR AVE E
1040 LEADER BUILDING
CLEVELAND, OH 44114-1902

JOYCE GOLDSTEIN, ESQ.
GOLDSTEIN GRAGEL LLC
526 SUPERIOR AVE E STE 1040
CLEVELAND, OH 44114-1401

(b) (6), (b) (7)(C)
INDEPENDENCE EXCAVATING INC
5720 SCHAAF RD
INDEPENDENCE, OH 44131-1396

FRANK W. BUCK, ESQ.
LITTLER MENDELSON
1100 SUPERIOR AVE., 20TH FLOOR
CLEVELAND, OH 44114

(b) (6), (b) (7)(C)
UNIVERSITY HOSPITALS HEALTH
SYSTEMS INC. (UH)
11100 EUCLID AVENUE
CLEVELAND, OH 44106

RAYMOND KRNCEVIC, ESQ.
3605 WARRENSVILLE CENTER ROAD
SHAKER HEIGHTS, OH 44122

(b) (6), (b) (7)(C) STRUCTURAL GROUP
G.M.
THE RUHLIN COMPANY
6931 RIDGE ROAD
P. O. BOX 290
SHARON CENTER, OH 44274

December 27, 2013

(b) (6), (b) (7)(C)

GOETTLE EQUIPMENT COMPANY
12071 HAMILTON AVE
CINCINNATI, OH 45231-1032

JAMES A MILLS, ESQ.
DENLINGER, ROSENTHAL & GREENBERG
425 WALNUT ST STE 1800
CINCINNATI, OH 45202-3948

(b) (6), (b) (7)(C)

CONSTRUCTION EMPLOYERS
ASSOCIATION
950 KEYNOTE CIR STE 10
CLEVELAND, OH 44131-1802

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
Room 8820, 1099 - 14th Street, N.W.
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)



International Union of Operating Engineers

LOCAL 18 AND ITS BRANCHES • SERVING OHIO

THIRTY-FIVE FIFTEEN PROSPECT AVENUE • CLEVELAND, OHIO 44115

(216) 432-3138

FAX: (216) 432-0370

William I. Fadel
General Counsel

January 2, 2014

General Counsel
Attn: Office of Appeals
National Labor Relations Board
1099 - 14th Street NW, Room 8820
Washington, DC 20570-0001

**Fax (202) 273-4283
and Certified U.S. Mail**

RECEIVED
NATIONAL LABOR
RELATIONS BOARD
2014 JAN - 2 PM 12:03
OFFICE OF APPEALS

In Re: Cleveland Building & Construction Trades Council (CBCTC) 08-CA-111393

Construction Employers Association (CEA) 08-CA-111394

Goettle Equipment Company 08-CA-11395

The Ruhlin Company 08-CA-11397

University Hospitals Health Systems Inc. (UH) 08-CA-111398

Independence Excavating, Inc. 08-CA-111399

REQUEST FOR EXTENSION OF TIME TO FILE APPEAL.

Dear Sir/Madam;

On December 30, 2013 the undersigned counsel for the International Union of Operating Engineers, Local 18, Charging Party in the above captioned matters, received the Regional Director, Region 8 December 27, 2013 Decision to Dismiss Local 18's charges and advised that the Appeal of the Regional Director's decision must be filed with the NLRB Office of Appeals on or before January 10, 2014.



International Union of Operating Engineers

LOCAL 18 AND ITS BRANCHES • SERVING OHIO

THIRTY-FIVE FIFTEEN PROSPECT AVENUE • CLEVELAND, OHIO 44115

(216) 432-3138

FAX: (216) 432-0370

William I. Fadel
General Counsel

Due to the complexity of the charges, the intervening holidays, vacations and other scheduled pressing matters the undersigned on behalf of Local 18 respectfully requests that the time to file its Appeal be extended to January 24, 2014.

This request for extension is not requested nor based upon delay but is being filed in the interest of justice and if granted will not impinge the rights of any of the parties involved.

Pursuant to Order of the Regional Director a copy of this request for Extension of Time to file Appeal was served by fax (216)522-2418 and U.S. Mail upon Frederick J. Calatrello, Regional Director, Region 8 National Labor Relations Board, 1240 East 9th Street, Suite 1695, Cleveland, Ohio 44199-2086 this 2nd day of January 2014.

Sincerely yours,

William I. Fadel
General Counsel

International Union of Operating Engineers, Local 18.

Email: fadel.william@gmail.com

WIF (b) (6)

RECEIVED
NATIONAL LABOR
RELATIONS BOARD**INTERNATIONAL UNION OF OPERATING ENGINEERS****LOCAL 18 AND ITS BRANCHES - SERVING OHIO
THIRTY-FIVE FIFTEEN PROSPECT AVENUE - CLEVELAND, OHIO 44115****(216) 432-3138****(800) 452-1526****Fax: (216) 432-0370****FACSIMILE TRANSMITTAL SHEET****DATE: January 2, 2014****TO: National Labor Relations Board, General Counsel****ATTN: Office of Appeals****FAX: (202) 273-4283**

FROM: I.U.O.E. LOCAL 18**FAX: (216) 432-0370**

William Fadel, General Counsel**(SENDER'S NAME)**

TOTAL NUMBER OF PAGES (Including Cover Sheet): 3**Note: If this FAX is not transmitted completely, please call (216)432-2668**



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

January 3, 2014

WILLIAM FADEL
GENERAL COUNSEL
INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 18 (AFL-CIO)
3515 PROSPECT AVE E
CLEVELAND, OH 44115-2648

Re: Cleveland Building & Construction
Trades Council (CBCTC)
Case 08-CA-111393

Construction Employers Association (CEA)
Case 08-CA-111394

Goettle Equipment Company
Case 08-CA-111395

The Ruhlin Company
Case 08-CA-111397

University Hospitals Health Systems, Inc.
(UH)
Case 08-CA-111398

Independence Excavating, Inc.
Case 08-CA-111399

Dear Mr. Fadel:

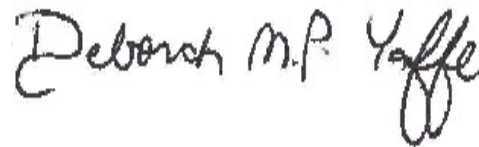
Your request for an extension of time to file an appeal is hereby granted to January 24, 2014. The appeal must be received in this office by the close of business at 5:00 p.m. (ET) on January 24, 2014, unless filed electronically. If the appeal is filed by mail, it will be timely if postmarked no later than January 23, 2014. An appeal postmarked on or after the due date will be considered untimely. The Region must receive a copy by the same date. In addition an appeal will not be accepted if filed by fax.

As fully set forth in the Region's decision letter, the appeal may be filed electronically by using the E-filing system on the Agency's website www.nlr.gov. An electronic appeal will be considered timely if it is received by 11:59 p.m. (ET) on January 24, 2014

Sincerely,

Richard F. Griffin, Jr.
General Counsel

By:



Deborah M.P. Yaffe, Director
Office of Appeals

cc: FREDERICK J. CALATRELLO
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
1240 E 9TH ST STE 1695
CLEVELAND, OH 44199-2086

(b) (6), (b) (7)(C)
GOLDSTEIN & GRAGEL, LLC
526 SUPERIOR AVE E
1040 LEADER BUILDING
CLEVELAND, OH 44114-1902

JAMES A MILLS, ESQ.
DENLINGER, ROSENTHAL
& GREENBERG
425 WALNUT ST STE 1800
CINCINNATI, OH 45202-3948

JOYCE GOLDSTEIN, ESQ.
GOLDSTEIN & GRAGEL, LLC
526 SUPERIOR AVE E STE 1040
CLEVELAND, OH 44114-1401

FRANK W. BUCK, ESQ.
LITTLER MENDELSON
1100 SUPERIOR AVE 20TH FL
CLEVELAND, OH 44114

RAYMOND KRNCEVIC, ESQ.
3605 WARRENSVILLE CENTER RD
SHAKER HEIGHTS, OH 44122

lmr



International Union of Operating Engineers

LOCAL 18 AND ITS BRANCHES • SERVING OHIO

THIRTY-FIVE FIFTEEN PROSPECT AVENUE • CLEVELAND, OHIO 44115

(216) 432-3138

FAX: (216) 432-0370

William I. Fadel
General Counsel

January 10, 2014

via United Parcel Service

Mr. Richard Griffin
General Counsel
National Labor Relations Board
Office of Appeals
1099 14th Street, NW
Washington, DC 20570-0001

In Re: Cleveland Building & Construction Trades Council 08-CA-111393; Construction Employers Association 08-CA-111394; Goettle Equipment Co. 08-CA-111195; The Ruhlin Co. 08-CA-111397; University Hospitals Health Systems Inc. 08-CA-111398; Independence Excavating Inc. 08-CA-111399

Dear Mr. Griffin:

Enclosed herein, please find the International Union of Operating Engineers Local 18 Appeal from the Decision of the Regional Director, Region 8's refusal to issue a Complaint in the above captioned matters. A copy of the same is also served upon Frederick Calatrello, Regional Director, Region 8.

Thank you for your cooperation in this matter.

Sincerely yours,


William I. Fadel

WIF

Enclosure

C: Mr. Frederick Calatrello

OFFICE OF APPEALS

2014 JAN 13 PM 3:37

RECEIVED
NATIONAL LABOR
RELATIONS BOARD

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18

Charging Party/Appellant

vs.

**Cleveland Building Construction Trades Council (CBT)
08-CA-111393;**

**Construction Employers Association (CEA)
08-CA-111394;**

**Goettle Equipment Co.
08-CA-111395;**

**The Ruhlin Company
08-CA-111897;**

**University Hospitals Health Systems Inc. (UH)
08-CA-111398;**

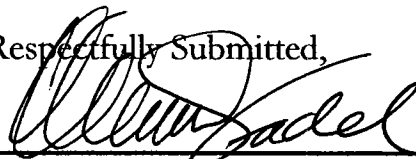
**Independence Excavating, Inc.
08-CA-111399**

Respondents/Appellees

**APPEAL FROM THE DECISION OF THE REGION 8 REGIONAL
DIRECTOR'S REFUSAL TO ISSUE A COMPLAINT**

Now comes the Charging Party/Appellant, International Union of Operating Engineers Local 18 by and through the undersigned Counsel and hereby submits its appeal of the decision of the Regional Director, Region 8 to refuse to issue a Complaint against the above captioned Respondents/Appellees for violation of Title 29 U.S.C. § 158(a)(1)(2)(3) and (5).

Respectfully Submitted,



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ASSIGNMENTS OF ERROR

1. The Regional Director, Region 8 erred in finding that the Board lacked jurisdiction because the Cleveland Building & Construction Trades Council (“CBT”) is not an employer and that its conduct was performed in its capacity as a labor organization.
2. The Regional Director, Region 8 erred in finding that the Cleveland Employers Association (CEA), and the above captioned employers, having violated the law cured its unlawful conduct by removing their signatures from the Project Labor Agreement (PLA).
3. The Regional Director, Region 8 erred in finding that no violation of the Act occurred because the CBT and University Hospitals agreed to remove the unlawful language from the PLA, and that the next version of the PLA would not include the unlawful contract language.

THE RESPONDENTS

The Cleveland Building & Construction Trades Council (“CBT”) is an alliance of craft unions, employers as defined by the Act, that provides coordination and support to the work of its affiliated local unions. Various labor organizations are members of the CBT including Local 18. The CBT is headed by (b) (6), (b) (7)(C) who also serves as the (b) (6), (b) (7)(C) of the Laborers International Union of North America, Local 310. The CBT Bylaws provide that it “shall have complete jurisdiction over the building and construction trades industry and all branches, divisions, and sub-divisions thereof within the jurisdiction of Cuyahoga, Lake, Geauga, and Ashtabula Counties”. (Ex. B) Conspicuous by its absence is any clause in the Bylaws that describes the CBT as a labor organization nor any clause which defines its purpose. The CBT is an organization of labor unions which are employers as defined in the Act.

The Construction Employers Association (“CEA”) is a multi-employer bargaining association for construction companies in and around Cleveland, Ohio. For over a decade, Local 18 has negotiated a series of contracts with the CEA through the named Respondent which govern the terms and conditions of employment for Local 18 members performing building construction work within a specific geographic location in Northeast Ohio.¹ The terms and conditions covered by Local 18’s agreement with the CEA include the exclusive utilization of Local 18’s hiring hall,

¹ Specifically, the geographic jurisdiction covered by the CEA includes the following Ohio counties: Ashtabula; Cuyahoga. Erie; Geauga; Huron; Lake; Lorain and Medina.

mandatory drug testing procedures, and provisions relating to the support and use of Local 18's apprenticeship program. (Ex. A). In addition, the CEA agreements have for decades specifically identified forklifts and skid-steers as construction equipment within Local 18's contractual and craft jurisdiction. In order to preserve and protect Local 18's contractual mandated craft jurisdiction Local 18's agreements with the CEA have included a work preservation clause that mandates a specific economic sanction in the event any piece of equipment identified within Local 18's agreement is assigned to someone other than an operating engineer. (Id).

In addition to negotiating a building construction agreement with Local 18, the CEA and the above captioned Respondent employers also negotiate separate agreements with various other labor organizations including local affiliates of the Laborers' International Union of North America. For building construction work performed in and around Cleveland, Ohio the CEA directly negotiates with the Laborers' International Union of North America, Local 310 ("LIUNA 310").

FACTS

For over seventy years, the International Union of Operating Engineers Local 18 ("Union" or "Local 18") has represented the interests of construction equipment operators working in the State of Ohio. Currently, Local 18 represents approximately 15,000 operating engineers working in eighty-five of Ohio's eighty-eight counties along with four counties in Northern Kentucky. Headquartered in Cleveland, Ohio Local 18 operates five district offices across the state and negotiates and administers several contracts covering both the building and highway construction industry. Through each of these district offices, Local 18 operates an exclusive hiring hall which serves to refer operating engineers for employment in the field with signatory contractors. (Ex. A at ¶¶ 28 – 36). The procedures and rules applicable to Local 18's referral system are contained within the collective bargaining agreement negotiated by the Union; are posted at each of the Union's five district offices and operate on a first-in – first - out basis. (Id). Under this procedure, operating engineers desirous of obtaining employment must register as an applicant in one of the five district offices located across the state. (Id.) When registering, the applicant must fill out a registration card indicating the type of equipment they are capable of operating (i.e. forklift, skid steer, bulldozer, crane etc.) and special certifications they have received and the counties in which they are willing to work (i.e. Cuyahoga, Lorain, Erie, etc.).

Employers that are signatory to an agreement with Local 18 and that are desirous of obtaining the services of an operating engineer are required to call the Union's dispatcher at the district office covering the area where the work is to be performed.

When making this call employers must indicate the type of equipment to be operated (i.e. forklift and/or skid steer) along with any special requirements or certifications. Once a work order has been received the dispatcher fills the order by referring to the registration cards until a matching applicant is found.

For decades Local 18's collective bargaining agreements have specifically identified forklifts and skid steers as construction equipment that is exclusively within Local 18's craft jurisdiction. (Ex. A at ¶¶ 10 & 49). During that same period Local 18 had referred tens of thousands of its operating engineers to signatory contractors for the purpose of operating forklifts and skid steers. In order to preserve the scope and jurisdiction of work performed by its membership and avoid jurisdictional disputes with other crafts, Local 18 has consistently negotiated and consistently enforced work preservation clauses in each of its collective bargaining agreements that mandate an economic sanction in the event that a signatory employer elects to assign equipment that is within Local 18's contractually recognized craft jurisdiction to someone other than an operating engineer. (Ex. A at ¶ 21E). To this end Local 18 has successfully pursued grievances seeking damages from contractors that have elected to assign the operation of forklifts and skid steers to someone other than an operating engineer.

In the spring and summer of 2011 Local 18 and the CEA, and the above named Appellees, were engaged in contract negotiations that culminated in the present agreement between the parties. (Ex. A). During these negotiations with the CEA and the Respondent contractors Local 18 proposed new language quadrupling the applicable economic sanction for those CEA contractors that elect to assign equipment that is within Local 18's contract to someone other than an operating engineer. Specifically, Local 18 requested that the economic penalty be increased fourfold and identified as liquidated damages. Local 18 further requested the inclusion of new language in the agreement that would clarify that the employer is prohibited from remediating any economic penalty assessed and creating a jurisdictional dispute by reassigning the operation of contractual equipment to Local 18 members. *Id.* This proposal was summarily rejected by the CEA and its bargaining committee.

At the same time that it was engaged in negotiations with Local 18, the CEA, and the Appellees were also negotiating a new contract with LIUNA 310. Representatives from Donley's Inc. and the other Respondents attended and participated in these negotiations on behalf of the CEA. Eventually these contract negotiations culminated with the parties agreeing to a new agreement that included language assigning equipment to the Laborers' that was previously solely within the purview of Local 18's agreement including forklifts and skid steers.

Thereafter the Appellees and other employers that were signatory to a CEA agreement with both Local 18 and LIUNA Local 310 began assigning the operation of forklifts and skid steer work to employees represented by Local 310. As a result Local 18 began filing an increasing number of grievances alleging a violation of the work preservation clause contained within its agreement with the CEA. The majority of these grievances, filed against a number of non-Appellee employers, have been settled after the offending employer agreed to pay the requested economic sanction to Local 18. In these instances damages were paid directly to Local 18 members that were available to operate skid steers or forklifts at the time.

A number of these grievances, however, have also been cited by a select few contactors, including Donley's, as contributing to LIUNA affiliates (Local 310 and 860) unlawful demand for the assignment of forklift and skid steer work in violation of §8(b)(4)(D) of the Act. Over the objection of Local 18 a number of these charges have resulted in the Region conducting hearings under §10(k) of the Act.²

As the Regional Director was aware the CEA, Donley's and LIUNA 310 have, at the very least, mutually agreed to a common goal of ensuring that Local 18's grievances were subjected to jurisdictional hearings rather than arbitration. As a result, each of these entities have been at the forefront of the majority of 10(k) hearings held by the Region regarding the operation of skid steers and forklifts.

In retaliation for Local 18s' decision to continue to pursue grievances under the work preservation clause, the CEA, Donley's, et. al., the CBT, and LIUNA 310, through the CBT, began conspiring to develop a way to eliminate Local 18 from participating in the construction industry in northeast Ohio. To this end the parties, by and through the CBT, developed and signed a PLA ostensibly geared to encourage economic growth in greater Cleveland, and the equitable inclusion of inherently disadvantaged groups. In reality the PLA created by the CEA, Donley's et. al. and the CBT is nothing more than a pretext for excluding Local 18 and its members from construction projects in northeast Ohio.

² Laborers' Local 894 (Donley's, Inc.), Case No. 08-CD-081837; International Union of Operating Engineers Local 18 (Donley's Inc.), Case No. 08-CD-081840; Laborers' Local 860 (McNally/Kiewit), Case No. 08-CD-086140; Laborers' '860 (Ronyak Paving, Inc.), Case No. 08-CD-089283; Laborers' Local 310 (Donley's Inc.), Case No. 08-CD-091643; International Union of Operating Engineers Local 18 (Donley's Inc.), Case No. 08-CD-01637; Laborers' Local 310 (B & B Wrecking), Case No. 08-CD-091677; International Union of Operating Engineers Local 18 (B & B Wrecking), Case No. 08-CD-091770; Laborers' 310 (Cleveland Cement Contractors, Inc.), Case No. 08-CD-091678; International Union of Operating Engineers Local 18 (Cleveland Cement Contractors, Inc.), Case No. 08-CD-091773; Laborers' Local 310 (Hunt Construction Group), Case No. 08-CD-091682; International Union of Operating Engineers Local 18 (Hunt Construction Group), Case No. 08-CD-091683; Laborers' Local 310 (Precision Environmental Co.), Case No. 08-CD-091687; International Union of Operating Engineers Local 18 Case No. 08-CD-091684; Laborers' Local 310 (Construction Employers Association), Case No. 08-CD-091686

Under the terms of the PLA signatory developers including University Hospitals, Cuyahoga Community College, the City of Cleveland, and the Cleveland Municipal School District, and more recently (January 8, 2014), The Finch Group (collectively referred to as “Developers”), agreed to support the CEA in establishing diversity and inclusion and reporting programs for traditionally disadvantaged businesses and individuals. The Developers also agreed to support and exclusively utilize an apprenticeship and pre-apprenticeship programs sponsored the CEA and the CMSD. Moreover, under the terms of the PLA the Developers agreed that they would only contract with construction companies that have adopted the terms of the PLA.

In August of 2013 the CEA, CBT, and University Hospitals (“UH”) and on January 8, 2014 The Finch Group negotiated and entered into a Community Benefits Agreement (PLA) governing construction work performed by Donley’s on UH’s Garage 59 (“Garage 59 Community Benefits Agreement”) and on The Finch Group jobs (Exs. C and G). Under the terms of the PLA the developer, mandated that any and all contractors performing work on the project must both become signatory to a collective bargaining agreement with the trade unions that are party to the agreement including LIUNA 310 and recognize those unions as the exclusive bargaining agent for employees working on the project. The PLA also specifically mandates that contractors working on the project must use each respective signatory union’s hiring hall and referral system to fill any vacancies on the job. For their part any union whose members are working on a PLA project must use the apprenticeship and pre-apprenticeship programs developed by the CEA under the PLA for referral of apprentices.

Despite the fact that Local 18 members work for CEA contractors that are or will be performing work in northeast Ohio generally and on the these projects specifically the CEA elected to exclude Local 18 from any negotiations relating to the PLA. Rather, the CEA, Donley’s, and the CBT instead elected to specifically exclude Local 18 from performing any work on the Garage 59 project.

Paragraph B.1(h) specifically states:

“Items specifically excluded from the scope of this Agreement are: ...

“(h) Any and all work which is traditionally performed by the Operating Engineers Local 18 in its current collective bargaining agreement to the extent it is not traditionally performed under any of the collective bargaining agreements listed in Attachment A.”

The PLA further provides in paragraph O:

“While working on this project the collective bargaining agreements listed in Attachment A shall superseded any other collective bargaining agreements to which the contractor may be signatory. The failure of a contractor to comply with the provisions of this Article shall be considered a material breach for which the Developer may terminate the contractor’s contract.”

For the first time a PLA included a multi-employer bargaining association, the CEA, as a party. (b) (6), (b) (7)(C), (b) (7)(D) Ex. D). Essentially the CEA and its negotiation team obtained what they could not get at the bargaining table nor what they were able to get from the NLRB, i.e. no operating engineers on the equipment and no operating engineers on the job site.

More recently, January 8, 2014, the CBT negotiated and approved the same PLA with The Finch Group for the Upper Chester Neighborhood of Hough. (Ex. G). While the exclusionary language of paragraph (h) was eliminated the remainder of the PLA was left intact including the exclusionary language in paragraph O. Paragraph (h) was not the only language eliminated, so was a signature line for Local 18. If Local 18 is not a party to the PLA only those union members whose contracts are listed on Attachment A are permitted to work on this job, essentially eliminating Local 18, its members and its signatory contractors from working on the job.³ If Local 18 signs the PLA its members would be forced to work under terms and conditions of an agreement its bargaining representative did not negotiate. These negotiations for the Hough PLA were followed by the election of (b) (6), (b) (7)(C) of Donley’s, as (b) (6), (b) (7)(C) of the CEA at the CEA’s October 29, 2013 annual meeting. (Ex. F).

THE LAW AND ARGUMENT

Section 8(a)(1) of the NLRA makes it an unfair labor practice for an employer “to interfere with, restrain, or coerce employees in the exercise of the rights” to organize, join or assist unions, bargain collectively, and engage in collective action. 29 U.S.C. § 158(a)(1); see also NLRA § 7, 29 U.S.C. § 157. A section 8(a)(1) violation occurs when substantial evidence demonstrates that the employer’s statements, considered from the employees’ point of view, had a reasonable tendency to coerce. *Beverly Health & Rehab Servs. v. NLRB*, 297 F.3d 468, 476 (6th Cir. 2002); *Peabody Coal v. NLRB*, 725 F.2d 357, 363 (6th Cir. 1984). The union does not have to demonstrate actual coercion. *Torbitt & Castleman, Inc. v. NLRB*, 123 F.3d 899, 907 (6th Cir. 1997). Trying to induce employees to rid themselves of a union by intimating they would be better off without

³ There is ample evidence to support the conclusion that Donley’s has the contract to build the parking garage on this project.

it are well established violations of § 8(a)(1). *NLRB v. Flex Plastics, Inc.*, 726 F.2d 272, 276 (6th Cir. 1984) (employer unlawfully undermined union by telling employers they could get better deal without it); *Sedloff Publ'ns, Inc.*, 265 NLRB 962, 969 (1982).

In the present matter, the CEA, CBT, and Donley's et. al. interfered with, restrained, and coerced Local 18's members in the exercise of their rights to organize, join or assist unions, bargain collectively, and engage in collective action by and through a representative of their own choosing. By excluding Local 18 from performing any work on the Garage 59 project, and now the Hough project, the CEA and the CBT are clearly communicating that Local 18's members would be better off without Local 18 functioning as their exclusive bargaining representative. Moreover, by creating and implementing its own referral system under these PLAs, the CEA, Donley's, and the CBT are intentionally communicating to Local 18 members that Local 18 cannot and will not be able to refer their members for work on projects in and around northeast Ohio.

Section 8(a)(2) makes it an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization or contribute financial or other aid to it. 29 U.S.C. § 158(a)(2) therefore ensures that employees designate a collective bargaining agent of their own independent choice without outside interference by any employer who might prefer dealing with a less aggressive labor union. An employer's conduct that actively prefers one of two rival unions violates the Act and generally falls within the definition of unlawful assistance.

In this case the CEA has clearly attempted to dominate and interfere with the administration of Local 18. Indeed by created PLAs that specifically exclude Local 18 from representing any employees working on various construction projects in northeast Ohio the CEA, Donley's, and the CBT are clearly demonstrating preference for other labor organizations whose members purportedly perform work covered by Local 18's agreement (i.e. LIUNA 310). In so doing the CEA, Donley's, and the CBT have clearly provided unlawful assistance to LIUNA 310.

Section 8(a)(3) of the Act prohibits employers from discriminating in regard to hire or tenure of employment to encourage or discourage membership in any labor organization. Once again the CEA et. al. and the CBT have run afoul of this section by actively discriminating against Local 18 members in favor of members of LIUNA 310. Specifically, by excluding Local 18 and its membership from performing any work on projects covered by the PLAs the Respondents are attempting to retaliate against Local 18 for filing work preservation grievances concerning forklifts and skid steers. In so doing the Respondents are discriminating against employees that have elected to utilize Local 18 as their duly authorized bargaining representative.

NLRA § 8(a)(5) makes it an unfair labor practice for an employer to refuse to bargain collectively with the employees' representatives. 29 U.S.C. § 158(a)(5). That section incorporates by reference § 9(a) which makes the bargaining unit representatives the exclusive representative of the employees "for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." 29 U.S.C. § 159(a). Thus employers may not go directly to employees who have not repudiated their union and bargain with them on matters covered by the collective bargaining agreement. *NLRB v. Goodyear Aerospace Corp.*, 497 F.2d 747, 752 (6th Cir. 1974); see also *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180, 18 L. Ed. 2d 1123, 87 S. Ct. 2001 (1967) ("only the union may contract the employee's terms and conditions of employment..."). An employer may communicate directly with its employees only "if such expression contains no threat of reprisal or force or promise of benefit and only when doing so is not "likely to erode the Union's position as exclusive representative." *Allied – Signal, Inc.*, 307 NLRB 752, 753 (1992) (quoting *Modern Merch.*, 284 NLRB 1377, 1379 (1987)). Furthermore, when the statements themselves constitute unfair labor practices, for instance because they disparage the union, hold the employer out as the employees' protector, or undermine the union by changing employment conditions treated in the collective bargaining agreement, direct dealing is presumed. *NLRB v. Pratt & Whitney Air Craft Div., United Techs. Corp.*, 789 F.2d 121, 134 – 35 (2d Cir. 1986); see also *Henry Bierce Co. v. NLRB* 23 F.3d 1101, 1109 (6th Cir. 1994) (polling employees without informing union about poll is direct dealing); *NLRB v. M.A. Harrison Mfg. Co.*, 682 F.2d 580, 582 (6th Cir. 1982) (bypassing Union by directly soliciting employee views on an insurance plan is direct dealing); *NLRB v. Roll & Hold Warehouse & Distribution Corp.*, 162 F.3d 513, 519 (7th Cir. 1998) (finding company undermined union by presenting plan to employees before notifying union); *Safeway Stores, Inc. v. NLRB*, 205 U.S. App D.C. 440, 641 F.2d 930, 932-33 (D.C. Cir 1979) (finding § 8(a)(5) violation when employer told employees that union was to blame for state of negotiations).

Here, the CEA and the CBT decision to by-pass Local 18 and directly negotiate with other contractors and developers for an agreement covering the terms and conditions of employment for Local 18 members constitutes a clear violation of section 8(a)(5). By negotiating these PLAs the CEA and the CBT are implicitly informing Local 18's members that the Union cannot properly represent their interests in the northeast Ohio construction industry,

The Regional Director's decision to dismiss Local 18's Charges fails to address these issues and thereby ignored the underlying violations. Instead the Regional Director, in a blatant attempt to avoid the obvious violations, simply concluded that the CBT is not an employer but a labor organization and that its actions were performed in that capacity. The decision ignored the fact that the CBT is an organization of a number of

employers; that they have never been certified or recognized as a collective bargaining representative for any group of employees; that the CBT does not represent any employees; and that its own Bylaws do not refer to itself as a labor organization. The Regional Director's decision also demonstrates his confusion by concluding that the CBT is a labor organization and not an employer because the CBT has only two employees, a manager and confidential employee therefore it is not a statutory employer. So it must, therefore, be a labor organization. The Regional Director failed to recognize the CBT as an employer association who's members meet the jurisdictional standard as an employer over which the Board has asserted jurisdiction. See *Stack Elec.* 290 NLRB 575; *Hotel Employees San Francisco Local Joint Executive Bd. v. NLRB* 501 F.2nd 794 (D.C. Cir. 1974).

While it is obvious that this case does not arise out of Section 9 of the Act it is confusing as to what the employment status of the manager and the confidential employee of the CBT has to do with whether the Board has jurisdiction. Is the Regional Director concluding that if a manger or confidential employee violate the law that the Board is helpless to enforce its laws because there are only two employees? Regardless of the number or positions held by the employees of an employer if they violate the Act the Board has jurisdiction to enforce compliance. That having been said since the CBT is an association of employers that speaks on behalf of its membership, the Board has jurisdiction. *C.F. Blockberry Creek Trucking* 291 NLRB 474 (1988).

The Regional Director illogically concluded that "when the CEA and its employer members learned of the exclusionary language it removed its name as a party from the introduction and signature pages of the PLA so "... any wrongdoing by the CEA was cured as the agreement naming the CEA as a party was never executed." The unanswered question is when did the CEA learn of its wrongdoing and when did it decide, based upon its wrongdoing, to remove its name; when did this epiphany occur? Was it when they received the Charge or when they responded to the investigation? What difference does it make that the unlawful agreement was not executed by the CEA. The violation had already occurred. The violation occurred when the CEA, Donley's, the CBT, and UH negotiated the agreement which by the CBT's own admission was ready for signature on August 7, 2013. (Ex. E) (Ex. D, page 10). The Regional Director ignores the fact that while the CEA did not sign the agreement, they negotiated the agreement.

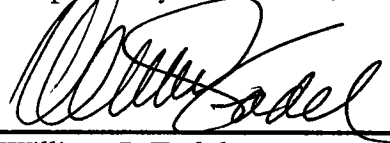
Adopting the story line from the movie "Back to the Future" the Regional Director then decides that the "final version of the PLA will not include such exclusionary language. As a result no violation of the Act has been established." Unlike the movie the Regional Director's look into the future was cloudy. In less than one month after

this representation the same parties negotiated the same PLA, which by operation of its terms, still excludes Local 18 members and its signatory employers from the job site. (Ex. G, paragraph O).

This logic is akin to arguing that no bank robbery was committed because the wrong doers (here the CEA, CBT, and UH) while inside the bank with their fists full of money observed that the bank was surrounded with law enforcement agents (the NLRB investigator) so they decide give the money back and then tell law enforcement that they will not rob the bank again. Based upon these facts the wrongdoers are released as no violation of the Act has been established. Nowhere else in the world of statutory enforcement does this position make sense except in the NLRB world, and in less than a month the Respondents proved the Regional Director wrong.

Based upon a fair examination of the facts in this Charge, and based upon applicable law, the Appellant respectfully requests that the Office of General Counsel remand Appellant's charges back to Region 8 with an order to issue a complaint.

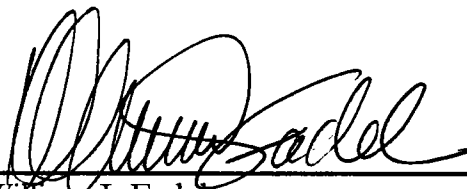
Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'William I. Fadel', is written over a horizontal line.

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CERTIFICATE OF SERVICE

The original of this Appeal was served upon the General Counsel, Office of Appeals National Labor Relations Board, 1099 14th Street, NW, Washington, DC 20570-0001, and a copy upon Frederick Calatrello, Regional Director Region 8, 1240 E. 9th Street, Suite 1695, Cleveland, Ohio 44199-2086 by United Parcel Service this 10th day of January 2014.

A handwritten signature in black ink, appearing to read 'William I. Fadel', written over a horizontal line.

William I. Fadel

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First Reading	<u>10/20/09</u>
Second Reading	<u>10/27/09</u>
Third Reading	<u>11/10/09</u>
Voted On	<u>11/10/09</u>
Adopted	<u>12/01/09</u>

CONSTITUTION AND BY-LAWS
OF THE
CLEVELAND BUILDING & CONSTRUCTION TRADES COUNCIL
3250 Euclid Avenue, Suite 280, Cleveland, Ohio 44115-2520

AFFILIATE
OF
BUILDING & CONSTRUCTION TRADES DEPARTMENT, AFL-CIO
Washington, DC

ARTICLE 1
NAME

This organization shall be known as the CLEVELAND BUILDING & CONSTRUCTION TRADES COUNCIL.

COUNCIL OFFICERS

PRESIDENT
VICE-PRESIDENT
TREASURER
RECORDING-SECRETARY
SERGEANT-AT-ARMS
TRUSTEE
TRUSTEE
TRUSTEE
EXECUTIVE SECRETARY-BUSINESS MANAGER

ARTICLE 2

JURISDICTION

Section 1. The COUNCIL shall have complete jurisdiction over the building and construction trades industry and all branches, divisions and sub-divisions thereof, within the jurisdiction of CUYAHOGA, LAKE, GEAUGA and ASHTABULA COUNTIES.

Section 2. The COUNCIL shall, in all its activities, cooperate with the officers and representatives of the Building and Construction Trades Department, Washington, D.C.

ARTICLE 3

MEMBERSHIP

Section 1. Membership in this Council shall be confined to bona-fide building and construction trades local unions in good standing with International unions affiliated with the Building and Construction Trades Department, which local unions must be accepted on application.

Section 2. All local building and construction trades unions of National and International unions affiliated with the Department within the geographical jurisdiction of this Council shall affiliate with this Council.

ARTICLE 3. Continued

Section 3. Representation in this Council from local unions shall be as follows:

Less than 400 members	2 Delegates
400-799 members	4 Delegates
800-1,199 members	6 Delegates
1,200-2,499 members	8 Delegates
2,500-4,999 members	10 Delegates
5,000-7,499 members	12 Delegates
7,500-12,499 members	14 Delegates
12,500 members or more	18 Delegates

Plus one (1) additional delegate for each 2,500 members over 12,500.

Where two (2) or more local unions of a National or International union form a District Council within the geographical jurisdiction of this Council, representation for the local unions may come through said District Council in lieu of direct representation from the local unions. In any event, where two (2) or more local unions of the same National or International are affiliated with this Council, the said local unions shall be entitled to representation in this Council on the basis of their individual membership only.

Section 4. Delegates to this Council shall consist of duly elected or appointed members in good standing in their local union for a period of not less than two (2) years.

Section 5. Credentials of delegates shall be furnished by local unions or District Councils on official stationery, and shall be signed by the President and Secretary and bear the seal of the Local Union or District Council.

Section 6. Whenever the territorial jurisdiction of a local union embraces or overlaps the geographical jurisdiction of two (2) or more local Building and Construction Trades Councils, then such local union shall pay per-capita tax to each local Building and Construction Trades Council, based upon the number of building tradespersons working in the geographical jurisdiction of each local Council, according to the number of membership cards issued. Said local union shall have representation in each local Building and Construction Trades Council based upon the number of persons working in the geographical jurisdiction of each Council.

ARTICLE 3 Continued

Section 7. A quarterly membership card properly issued by any local, provincial or state council affiliated with the Building and Construction Trades Department shall be recognized as valid within the jurisdiction of this Council until its expiration date. Provided, however, that a member of any local union who takes advantage of this provision, if he or she desires to continue to work within the jurisdiction of this Council beyond the end of any calendar quarter, must obtain the membership card prescribed by this Council from the affiliated local union of his or her trade, or if there is no local union of his or her trade affiliated, from this Council.

ARTICLE 4

MEETINGS

Section 1. The meetings of the Board of Business Agents shall be held weekly on Tuesday morning at 10:00 a.m. The Cleveland Building Trades Council meeting shall be held on the first Tuesday morning of each month at 10:00 a.m.

Section 2. Special meetings may be called by the President or Executive Secretary-Business Manager on written request of the Executive Board or the Board of Business Agents or that of a quorum of delegates, which request shall set forth the business to be settled: provided, however, that no other business will be considered or acted upon except that specified in the call.

Section 3. A quorum shall consist of representatives of one-fourth (1/4) of the delegates to the Council, provided they represent one-half (1/2) of the affiliated trades.

ARTICLE 5

OFFICERS

Section 1. The Officers of the Council shall consist of the PRESIDENT, VICE-PRESIDENT, EXECUTIVE SECRETARY-BUSINESS MANAGER, TREASURER, RECORDING SECRETARY, SERGEANT-AT-ARMS,

TRUSTEES (3); and Business Agents —when deemed necessary. It shall be optional with this Council if it desires to consolidate any of these offices. No two (2) members of the same National or International Union affiliated with the Building and Construction Trades Department may hold office in the Council at any time.

ARTICLE 5 Continued

Section 2. The Officers of the Council shall be ELECTED from among the delegates. In order to qualify to hold office in the Council, a delegate must be a member in continuous good standing in his local union for a period of at least two (2) years prior to this election as a delegate and must be a qualified building tradesperson.

Section 3. The PRESIDENT shall preside at the meetings of the Council and preserve order, and shall enforce the Constitution and By-Laws of the Building and Construction Trades Department and of this Council, and their policies and decisions.

He shall be charged with the continuity of the business of the Council in the event of sustained absence of the Executive Secretary-Business Manager.

Section 4. The VICE-PRESIDENT, in the absence of the President, shall perform all duties pertaining to the office of the President.

Section 5. The RECORDING SECRETARY shall keep a record of the proceedings of the Council and attest all orders signed by the President. He shall be custodian of the records and seal of the Council. He shall furnish each affiliated local union with a copy of the proceedings of the Council and he shall perform such other duties as may be required by this Constitution or assigned by the Council or Executive Board of Business Agents.

Section 6. The EXECUTIVE SECRETARY-BUSINESS MANAGER shall receive all dues and money to be paid to the Council and turn same over to the Treasurer, taking his receipt there from. He shall keep an accurate account of all monies received and expended. He shall issue all orders for the payment of bills ordered by the Council, the same to be attested by the signatures of the President and Recording Secretary. He shall make quarterly financial reports to the Council. He shall notify all unions in arrears, and shall receive such salary and expenses as the Council, or motion or resolution, may determine.

He shall be the Council delegate to all functions concerning the Council. He shall exercise supervision of the Council throughout its jurisdiction. He shall be

responsible for all official correspondence pertaining to the Council. He shall countersign with the Treasurer all checks for disbursement.

Section 7. The TREASURER, or his designee, shall receive from and receipt for all monies paid to him by the Executive Secretary-Business Manager, and disburse the same upon the order of the Council. He shall keep an account of all monies received and expenses and produce his books for inspection whenever called upon by the Board of Trustees. He, or his designee, shall deposit all monies or funds in such banks as the Council may designate.

ARTICLE 5 Continued

He shall furnish such bonds as the Council may require and receive such expenses as the Council, by motion or resolution, as may be determined by the Executive Board, provided that it be not less than \$1.00 per year to insure the legality of his bond.

He shall conduct a financial compilation yearly. A full audit shall be conducted every three (3) years.

Section 8. The SERGEANT-AT-ARMS shall maintain order and perform such duties as the presiding officer may direct.

Section 9. No delegate shall be eligible to be nominated to hold any office in this Council unless his organization shall have paid all its indebtedness to the Local Council up to the first day of the current quarter.

Section 10. Local Council shall elect officers for a minimum term of three (3) years. ELECTION shall take place in the month of JANUARY not less than 20 days after nomination.

Section 11. The Election shall be by SECRET BALLOT, and it shall require a majority of all votes cast to elect officers. In any election where no candidate receives a majority of the votes cast, there shall be a runoff election between the two (2) candidates with the greatest number of votes.

Section 12. NOMINATION OF OFFICERS shall take place in December. No nominee shall be eligible to be a candidate for more than one (1) Council office.

Section 13. Not less than 15 days prior to nominations and not less than 15 days prior to election, NOTICES will be mailed to each delegate in good standing at his or her local known home address.

ARTICLE 5 Continued

Section 14. The President or presiding officer shall appoint one (1) Judge and two (2) Tellers to conduct the election. The Secretary shall call the roll and as the delegates are called, they shall advance and receive their ballots. A delegate may assign his or her ballot to a delegate of the same affiliation in writing prior to the election. After the ballots have been cast, the Tellers shall count the ballots and report the vote. Each candidate shall be permitted to have one (1) observer at the counting of the ballots.

Section 15. Officers shall hold office for the period of their election and until their successors are installed.

Section 16. INSTALLATION OF OFFICERS shall take place not more than 30 days after the election.

Section 17. Before the Officers shall enter upon their duties, the President shall deliver the following obligation:

OBLIGATION OF OFFICERS

"I....., pledge my honor that I will to the best of my ability, fulfill the duties devolving upon me as an Officer of this Council, and that I will act in my assigned capacity for the general benefit of the members, and that I will turn over to my successor all funds, books, records and properties in my possession at the expiration of my official term."

Section 18. Vacancies in office shall be filled for the unexpired term by a majority vote of the Council in accordance with Sections 13 and 14 of this Article. Nominations and elections may be held at the same meeting. In any election where no candidate receives a majority of the votes cast, there shall be a runoff election between the two (2) candidates with the greatest number of votes.

Section 19. Any delegate representing a newly affiliated or re-affiliated union IS NOT ELIGIBLE TO RUN FOR OFFICE FOR A PERIOD OF ONE (1) YEAR.

ARTICLE 6

EXECUTIVE BOARD OR BOARD OF BUSINESS AGENTS

Section 1. The Executive Board or Board of Business Agents shall govern on all matters and business between meetings of the Council.

Section 2. The Executive Board shall develop, implement and periodically review the Policy and Procedures manual.

ARTICLE 7

TRUSTEES

Section 1. The Trustees shall have supervision over all funds and property of the Council. They shall require the financial officers to be properly bonded, and the funds of the Council to be placed in such banks as are selected by the Council as its depository, in the name of the Council. Such funds may not be withdrawn except by checks, regularly drawn and signed by the proper officers. The Trustees shall audit the books of the Council at the end of each fiscal quarter and submit a statement of said audit to the Council not more than two (2) weeks after the close of each quarter.

ARTICLE 8

FINANCES

Section 1. The revenue of the Council shall be derived from an affiliation fee of \$25.00, and from the payments by the affiliated local unions of a monthly/quarterly

per capita tax to be paid on all members who are engaged in building and construction work and others who are engaged in fabrication, assembly, processing or supplying building materials within the geographical jurisdiction of the Council, and by assessments to cover unavoidable deficits, which must be approved by a majority of the Council delegates attending the monthly Council meeting. The charge per-capita tax shall be at the discretion of the local Council, and the Council shall supply membership cards to the affiliated local unions.

ARTICLE 9

MEMBERSHIP CARDS

Section 1. This Council shall obtain all membership cards from either the State Council or the National Department.

Section 2. All membership cards must have the emblem and name of the Building and Construction Trades Department printed on the face thereof, and on the reverse side, the emblem and name of this Council. The universal membership card shall be carried by all affiliated members and no other card shall be recognized by the affiliated trades on any job or building where they are employed.

ARTICLE 10

AUTONOMOUS RIGHTS

Affiliated National and International Unions shall have autonomy over the conduct of their respective local unions and members, and this Council shall not suspend or expel any affiliated local union without first obtaining approval of the Governing Board of Presidents of the Building and Construction Trades Department.

ARTICLE 11

VIOLATIONS

Any officer or delegate violating the rules and laws of this Council shall have charges preferred against him or her in writing, and if after a fair impartial trial he or she is found guilty by a majority vote of those present and voting by secret ballot,

he or she shall be removed from office, and his or her credential returned to the union which he or she represents.

ARTICLE 12

MISCELLANEOUS

Section 1. No Local Council may be disbanded without the approval of the Governing Board of Presidents of the Building and Construction Trades Department.

Section 2. This Council shall not discriminate against traveling or non-resident members that may be temporarily employed within their territorial jurisdiction.

ARTICLE 12 Continued

Section 3. No local union affiliated with this Council shall institute or establish any picket line for jurisdictional purposes and this Council shall not authorize, institute or lend support to any such picketing.

Section 4. No local union affiliated with this Council shall institute or establish any picket line at a job site in support of an economic strike, unless the work of the striking union is being performed at a particular job site(s), and then only at such job site(s). This Council shall not recognize, authorize or lend support to picketing not in conformance with this Section. Nor shall this Council recognize, authorize or lend support to picketing by individuals, where such picketing is not authorized by the craft representing such individuals.

Section 5. Local Councils and all local unions affiliated with this Council shall incorporate in all collective bargaining agreements without change of the following provisions:

“All jurisdictional disputes between or among building and construction trades unions and employers, parties to this agreement, shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department, or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the employer and union parties to the agreement.”

Section 6. This Council shall notify the Department in writing of any local union or Council failing or refusing to pay its dues or per-capita tax into the Council for a period of three (3) consecutive months. Any such local union which fails or refuses to pay its dues or per-capita tax into the Council for three (3) consecutive months

shall automatically be denied the right to have their delegates or representatives present or participate in meetings of the Council, the Executive Board or Board of Business Agents.

REAFFILIATION: Any local union that has been suspended for non-payment of per-capita tax to the Council may be re-affiliated upon back payment, not to exceed four (4) quarters, at the discretion and approval by the Executive Board.

Section 7. Changes to the Constitution and/or By-Laws shall be submitted to the Executive Board through the Recording Secretary in writing. Changes will then be read to the membership at two (2) consecutive Board of Business Agents meetings and action taken at the next regularly scheduled Council meeting, where two-thirds (2/3) vote of all delegates present and voting will be required. These By-Laws will take effect the first of the month following the date final approval is voted by the Council.

ARTICLE 12 Continued

Section 8. Robert's Rules of Order shall prevail as the rule in all cases not provided for in the foregoing rules.

Section 9. All references to the male gender in any from in this Constitution and By-Laws are intended to include men and women.

COMMUNITY BENEFITS AGREEMENT FOR "GARAGE 59"
BY AND BETWEEN
UNIVERSITY HOSPITALS HEALTH SYSTEM, INC.
AND
THE CLEVELAND BUILDING AND CONSTRUCTION TRADES
COUNCIL AND ITS AFFILIATES

INTRODUCTION AND SCOPE

- A. This Community Benefits Agreement ("Agreement") is entered into this 6th day of August, 2013, by and between University Hospitals Health System, Inc. ("UHHS"), its successors or assigns (the "Developer"), and the Cleveland Building and Construction Trades Council ("CBCTC"), acting on its own behalf and on behalf of its affiliates (collectively, "Unions"), and the Construction Employers Association ("CEA"), acting on its own behalf, with respect to the construction of Garage 59 in Cleveland, Ohio ("Project").
- B. The term "Contractors" shall collectively refer to and include all employers and entities, including but not limited to, construction contractors and subcontractors of whatever tier engaged only in on-site construction work with respect to the Project within the scope of this Agreement. On-site construction work shall include: (1) demolition, excavation, and other site preparation work; (2) the off-site prefabrication of any building materials, systems, signage, displays, and/or components traditionally performed on-site; (3) the transportation to the site of only ready mix concrete, aggregate, top soil, and fill; and (4) only the transportation off-site of demolition and excavation materials. This Agreement does not apply to work not owned or controlled by the Developer provided; however, that all on-site work for the Project covered in a participating union's collective bargaining agreement shall be protected by this Agreement to the same degree and scope as in the collective bargaining agreement listed in Attachment A. The Developer agrees that it shall not self-perform on-site construction work with respect to the Project with its own employees.

All Contractors who enter into contracts with the Developer for the Project or Contractors (of any tier) who enter into contracts with Contractors for the Project, shall be bound to each and every provision of this Agreement to the same extent and effect as if the Contractor was an original party to this Agreement. All Contractors shall acknowledge, in writing, the acceptance of this Agreement by executing the Acknowledgement, which is attached hereto as Attachment B. All Contractors acknowledge that the acceptance of a Contract of any tier to perform Work for the Project is an acceptance of the terms of this Agreement.

- B.1. Items specifically excluded from the scope of this Agreement are:

(a) Work by non-manual or professional employees, including but not limited to the Architect, Construction Manager, consultants, superintendents, supervisors (except foremen and general foremen), engineers, inspectors, quality control personnel, quality assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, emergency medical and first-aid technicians, and other professional, engineering, administrative, and management employees;

(b) Testing of equipment and machinery in the care, custody, and control of companies other than Contractors;

(c) Work that is not within the recognized jurisdiction of the Unions;

(d) Any work performed on, near, or leading to or into the Project site by governmental bodies and/or utilities or railroads;

(e) Inspection, commissioning, testing and/or balancing of any building systems;

(f) Any construction work which the Developer, its Construction Manager or its Contractors determine requires specialized work which cannot be readily and timely performed by the Unions (e.g. the installation MRI's, CT scanners, surgical lights, and similar items of medical equipment). The Developer shall timely notify the Unions of this determination which shall be subject to the provisions of Paragraph T of this Agreement;

(g) To the extent a warranty for equipment or a system will be voided or unavailable, an applicable regulation of a governing body will be violated, or a security requirement of the Developer will not be met by the delivery or installation of such equipment or system by a union Contractor, the Developer will not be required to use a union Contractor to perform such work. Before using a non-union contractor to perform such work, the Developer will discuss the work to be performed with the CBCTC, ask the CBCTC to identify Union contractors who can perform the work on a competitive basis and meet the Developer's concerns, and select in good faith the contractor which the Developer determines is best suited for the Project which shall be subject to the provisions of Paragraph T of this Agreement; and

(h) Any and all work which is traditionally performed by the Operating Engineers Local 18 in its current collective bargaining agreement to the extent that it is not traditionally performed under any of the collective bargaining agreements listed in Attachment A.

CONTRACTORS

C. The Developer, the Contractors, and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction

and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craft workers for the construction of the Project.

- D. To maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement and to avoid workplace disruptions that may be caused by union and nonunion workers employed on the same jobsite, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise.
- E. Where there is a conflict, the terms and conditions of this Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Paragraphs K, L, M. M.1 and M.2, which shall apply to such work.
- F. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.
- G. Liability of any Contractor and the liability of the Unions shall be several and not joint.

DIVERSITY & INCLUSION

- H. A Memorandum of Understanding Regarding Community Benefits and Inclusion (the "MoU") was memorialized on February 26, 2013 with a goal of reframing the public discourse on economic development in Cleveland to encourage collaboration to fuel economic growth, harness that growth to create a more equitable and inclusive local economy and create shared prosperity. (A copy of the MoU is attached hereto as Attachment C.) In support of the MoU, the Project shall be performed subject to the following:

1) The Developer shall engage the Construction Diversity & Inclusion Committee or its designee to audit and report to the Developer compliance with the obligations set-forth below, and the Developer shall require the Contractor (of any tier) to provide to the Committee or its designee with certified monthly payroll reports and any other documentation necessary to verify compliance with the obligations set-forth below in paragraphs H.2 to H.7.

2) No Party to this Agreement shall intentionally discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, handicap, or age.

3) The Contractors employed on the Projects shall, in filling job vacancies, utilize the registration facilities and referral systems operated by the Unions in accordance with the provisions of the applicable federal and state laws. In addition to the other requirements set forth in this Agreement, the selection of applicants for work on the Covered Projects shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements.

4) Recognizing that the Unions have no control over the Developer's selection of Contractors, the Unions acknowledge and support the Developer's diversity goals of 15% Minority Business Enterprise, 7% Female Business Enterprise, and 8% Small Business Enterprise participation on this Project. The Construction Manager and Contractor will use commercially reasonable efforts to obtain bids from and recommend the award of trade contracts for fifteen percent (15%) of the combined aggregate value of its Cost of the Work of the Project and related vendor purchases to qualified State of Ohio, Cuyahoga County, or City of Cleveland certified MBE firms, seven percent (7%) of the combined aggregate value of its Cost of the Work of the Project and related vendor purchases to qualified State of Ohio, Cuyahoga County, or City of Cleveland certified FBE firms, and eight percent (8%) of the combined aggregate value of its Cost of the Work of the Project to qualified State of Ohio, Cuyahoga County, or City of Cleveland certified SBE firms in compliance with the terms and conditions of the Owner's MBE/FBE/SBE and Workforce Utilization Plan ("Diversity Goal").

5) The Unions acknowledge and support the Developer's desire to provide opportunity to small disadvantaged business enterprises, and agree to recognize mentor-protégé joint venture partnerships between certified small disadvantaged business enterprises (union or non-union) and Union Contractors which is equal or similar to the Contractors Assistance Association Mentor-Protégé Program (hereinafter "Bona Fide Mentor-Protégé Program). Notwithstanding this or any other provision of this Agreement, the joint venture entity and/or Mentor Contractor will be required to be or become signatory to the appropriate collective bargaining agreement as set forth in Paragraph K below.

6) In accordance with the MoU, the Developer shall:

(a) pay all undisputed construction invoices to the Mentor-Protégé Joint Venture Partnership within 25 to 45 days of the Developer's receipt of a properly submitted and correct invoice;

(b) incorporate the following into project bid specification documents and contracts for construction contractors at every tier:

(1) workforce reporting (as set forth in Paragraph H.1 of this Agreement) and Workforce Goals (as set forth in Paragraph H.7 of this Agreement) by each

Contractor, subject to the Developer's contractual remedies;

- (2) Contractor and Sub-Contractor participation in a Bona Fide Mentor-Protégé Program, subject to the Developer's contractual remedies; and

(c) take reasonable steps to relax contractual retainage and performance bonding requirements for the Mentor-Protégé Joint Venture Partnership and the MBE/FBE/SBE Contractors.

7) In accordance with the MoU and the Fannie M. Lewis Cleveland Resident Employment Law (the "Fannie Lewis Law"), the Unions shall use good faith efforts to support contractors' maximization of local workers who reside in the city where the Project is located to meet or exceed the Project goals of having residents of the City of Cleveland perform 20% of the total Construction Worker Hours for the Project and of having Low Income Persons perform 4% of the total Construction Worker Hours for the Project as those terms are defined in the Fannie Lewis Law (hereinafter collectively referred to as "Workforce Goals").

8) Good faith efforts are defined by the Unions' authentic and engaged efforts with all Contractors, the Developer, and the Construction Diversity & Inclusion Committee or its designee to meet or exceed the Workforce Goals. Such good faith efforts will also include, if necessary, requesting assistance from other local unions or municipal agencies to recruit sufficiently skilled tradesmen and craftsmen to meet the Workforce Goals. The Unions shall use good faith efforts to work, coordinate, and cooperate with any and all bona fide pre-apprenticeship programs identified in the MoU together with the Cuyahoga Community College Adult Pre-Apprenticeship Program and the Bricklayers and Allied Craftworkers Pre-Apprenticeship Program and the Cement Masons Local 404 Pre-Apprenticeship Program in Cleveland, Ohio as preferred first-source referral sources for new apprentices to assist the Developer to achieve the Workforce Goals for the Project.

9) Contractors and Unions shall provide eligible graduates of the aforesaid pre-apprenticeship programs opportunities for apprenticeships as required to meet the above-referenced Workforce Goals.

10) When a Contractor's request for employees to meet the Developer's Workforce Goals cannot be or is not being met, the Developer shall have the right to direct the Contractor to employ new apprentices who have completed one of the pre-apprenticeship programs set forth in paragraph H.7 above to meet the Developer's goals. With respect to each construction trade working on the Project, Contractors shall utilize apprentices in amounts on a per-trade basis specified in each applicable collective bargaining agreement. The Contractors, however, shall retain the right to reject any applicant for

employment. The failure to meet the stated goals will not be considered a breach of this Agreement.

11) The Unions agree to comply with and fully cooperate with the Contractors in order to meet or exceed the Developer's Diversity and workforce goals. If a Contractor's existing workforce does not satisfy the Developer's Workforce Goals, the Contractor shall send a written request (via email or similar means) for a referral of City of Cleveland residents or low income persons to the appropriate craft union with whom the Contractor is signatory. The Unions shall use good faith efforts to comply with the written request within 72 hours of its receipt.

DRUG FREE WORKSITE

- I. The Parties agree that the Project will be a "drug-free" worksite. The Unions agree to comply with the Construction Industry Substance Abuse Program ("CISAP"), a copy of which is attached hereto and incorporated herein as Attachment D. The Unions further agree to cooperate with the Developer in its efforts to create a drug and alcohol free workplace.

HELMETS TO HARDHATS

- J. The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment ("Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties. The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

UNION RECOGNITION AND SUBCONTRACTING

- K. The Developer and the Unions shall require that all work by Contractors within the scope of this Agreement be performed by Contractors who are or become signatory to collective bargaining agreements with one or more appropriate craft unions listed in Attachment A. The Contractors shall confirm that this condition has been satisfied prior to the commencement of that Contractor's work on the Project.

WORK STOPPAGES AND LOCKOUTS

- L. During the term of this Agreement there shall be no strikes, sympathy strikes, jurisdictional strikes, picketing, work stoppages, slowdowns, or other disruptive activity for any reason by the Unions or by any employee for any reason including the performance of any work outside the scope of this Agreement, and there shall be no lockout by the Developer or any Contractor.
- M. If wage negotiations are scheduled during the course of the Project, the Contractors agree to abide by all the terms and conditions as may be negotiated by the Unions and their respective employer association and the Contractors agree to pay said wages to all employees working and employed by the Contractor and its subcontractors for the work, retroactive to the date said increase and wage adjustments become effective. Said payments shall be made within twenty-one (21) days of the date of the new collective bargaining agreement. The Unions shall permit all employees to continue to work for the Contractors and their subcontractors during the pendency of negotiations, and the Unions will further agree that there will be no work stoppages, strikes or interferences with the work during the course of said negotiations.
 - M.1. The Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing, or other disruptive activity at the Project and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities that interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge by the Contractor. If justifiably discharged for any of the foregoing reasons, the employee shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.
 - M.2. The parties hereto agree that time is of the essence to this Agreement and to all contracts relating to the construction of the Project. The parties further agree that any delay due to any disruption of or interference with any activity relating to the construction of the Project will result in irreparable harm for which there is no adequate remedy at law and that, in such case, an injunction should issue to enjoin any such disruption or interference and to compel resolution of such dispute pursuant to the Agreement's grievance and arbitration procedure. All parties agree that, in the event that a Union initiates or participates in a work stoppage, strike, picketing or other disruptive activity in violation of this Article or recognizes or supports the work stoppage, strike, picketing, or disruptive activity of another Union that is in violation of this Article, the Developer or Contractor will have the right to seek an immediate injunction from the appropriate court in Cuyahoga County, Ohio to enjoin such conduct.

EMERGENCY INJUNCTIVE RELIEF

- N. In the event of an alleged violation of the contractual commitments set forth in Paragraphs K, L and/or M of this Agreement, the aggrieved party shall not be required to resort to the normal settlement procedures. Instead, the aggrieved party shall have the right to enforce these commitments by seeking an immediate injunction in the Court of Common Pleas in Cuyahoga County, Ohio. The Parties hereby agree that in the case of a violation of Paragraphs K, L and/or M of this Agreement, the aggrieved party will have no adequate remedy at law, cannot be made whole by money damages, and will be irreparably harmed by the conduct. Furthermore, once the injunction has been issued, the aggrieved party shall retain the right to full legal and equitable relief, including appropriate financial damages against any violating party. Should a Contractor fail to pay any wages and/or employee benefits, the Contractor shall also be liable for interest, reasonable attorney fees and court costs, in addition to other remedies the Union and/or its related fringe benefit funds may have.

FRINGE BENEFIT CONTRIBUTIONS

- O. Except as otherwise provided in this Agreement, the wage and fringe benefit requirements in this Agreement shall apply to all employees employed by any Contractor of any tier, or any person who performs any portion of the construction work within the scope of this Agreement. Except as otherwise provided in this Agreement, all Contractors shall comply with the wage, benefit, trust fund and industry program requirements set forth in the applicable collective bargaining agreement(s) listed in *Attachment A*. While working on this Project, the collective bargaining agreements listed in Attachment A shall supersede any other collective bargaining agreements to which a Contractor may be signatory. The failure of a Contractor to comply with the provisions of this Article shall be considered a material breach for which the Developer may terminate the Contractor's contract.
- O.1. If a Fringe Benefit Trust Fund or a Union provides the Developer with written notice that one of the Contractors is delinquent in making benefit contributions for a period of at least fifteen (15) days after said contributions are payable for work performed on the Project, the Developer shall withhold the amount of any work-in-progress payments owed to said Contractor in an amount which is equal to or greater than the amount of said delinquency until the Fund or Union notifies the Developer that the benefit contributions have been paid and made current. The Developer's obligation is limited only to the amount of unpaid work-in-progress payments owed to the Contractor at the time the Fund or Union notifies it of any delinquent contributions, and the Developer assumes no liability for payments of delinquent benefit contributions. Any good faith dispute between the Fringe Benefit Trust Fund and a Contractor over the amount of money owed to the fund are not subject to the provisions of Paragraph O. The Fund or Union which asserts a deficiency pursuant to Paragraph O, agrees to hold harmless and indemnify the Developer from any and all liability, costs, and expenses incurred

by the Developer which arises in any fashion from the asserted deficiency and the Developer's actions taken in response to said assertion.

JURISDICTIONAL DISPUTES

- P. Each direct-hire Contractor of any tier shall conduct a jurisdictional pre-job meeting prior to the commencement of the work for the purpose of discussing the scope and schedule of the work and intended work assignments by the Unions and to confirm that the Contractor is signatory to the appropriate collective bargaining agreement with one or more craft unions listed in Attachment A. The Developer's representative shall have the right to participate in such meetings. Except in emergency situations, no Contractor may commence work without conducting the jurisdictional pre-job meeting. Following the pre-job meeting, crafts shall be given the opportunity to submit evidence in support of a claim to the work. The Contractor will make its final assignments to a particular Union or Unions in writing prior to the commencement of the work. The initial and final assignments are the sole responsibility of the Contractor performing the work involved.
- Q. All work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.
- R. All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and Contractors shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Union parties to this Agreement.
- S. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

DISPUTES AND GRIEVANCES

- T. Jurisdictional disputes shall be resolved in the manner provided above in this Agreement. Disputes arising under the terms of an individual Union's collective bargaining agreement must be resolved in the manner provided under the individual Union's collective bargaining agreement. All other disputes arising under the terms and/or application of this Agreement that require an interpretation of this Agreement, and which grievance is (a) not jurisdictional, (b) not covered by a Union's collective bargaining agreement, and (c) not covered by Paragraphs K, L, M, M.1, M.2 or N shall be resolved as set forth in Paragraph U.

- U. Any question or dispute arising out of and during the term of this Agreement (other than those described above) shall be considered a grievance and subject to resolution under the following procedures:

1) (a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor and the Developer shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Developer) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Local Union(s), the Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

2) The International Union Representative and the involved Contractor shall meet within seven (7) working days of the referral of a dispute of this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

3) (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the American Arbitration Association to provide them with a list of arbitrators from which the Arbitrator shall be selected. The rules of the American Arbitration Association shall govern the conduct of the arbitration hearing. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

4) The Developer shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

- V. It is not the intent of the parties to this Agreement to violate any Federal, State, or local laws governing the subject matter contained herein, and any final determination that any provision of this Agreement violates any law or is otherwise not binding and enforceable shall have no effect on the validity of the remaining provisions of the Agreement. All parties who are signatory to the terms of this Agreement agree that, if any of the provisions contained herein is finally held or determined to be illegal, unenforceable, not binding, or void by a court of final and competent jurisdiction, an effort will be made by the parties hereto to promptly enter into negotiations concerning the clauses affected by such decision for the purpose of achieving conformity with the requirements of any applicable law or conflicting law so violated.

AMENDMENT

No alterations, amendments, or modifications hereof shall be valid unless set forth in an instrument in writing executed by the parties with the same formality as this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified, or abandoned, in whole or in part, except by an instrument in writing executed by the parties, and no subsequent oral agreement shall have any validity whatsoever. The Developer shall furnish sufficient copies of such amendments or modifications to the other parties.

TERM OF AGREEMENT

This Agreement shall be effective as of the date hereinabove written, and shall remain in effect with respect to each Contractor until the date of final completion of that Contractor's work. Once the Developer accepts an area or system within the Project following completion of the work applicable thereto except for the performance of punch list work, the parties agree that the Developer is authorized to secure and occupy the area or use the system as the Developer deems appropriate without objection from any of the parties hereto.

PROJECT ACCESS

The Developer and each affected Contractor shall afford reasonable access to the Project site to duly authorized representatives of the Unions signatory to this Agreement, provided they do not interfere with the work of employees or the delivery of supplies, equipment, tools or materials to the Project, and provided they comply with job and safety rules established and posted by the Employer(s) and/or the Developer.

MONTHLY MEETINGS

In an effort to avoid unnecessary disputes, maintain harmony, and address any unanticipated matters related to this Agreement which may arise over the course of the Project, the Developer (or its nominee) shall convene, on a monthly basis, a meeting of all Contractors and Unions working or scheduled to work on the Project. The meetings shall provide a forum to discuss and resolve, in good faith, any present or anticipated issue related to this Agreement and endeavor to resolve same without resort to the provisions of Paragraphs N, O, and T of this Agreement.

SIGNATURES

The parties to this Agreement need not all sign on the same page. Signatures on separate pages and executed at different times will not affect the validity of the Agreement. Original signatures and signatures provided by facsimile are equally valid.

UHHS

By: _____

Title: _____

Date: _____

Cleveland Building & Construction Trades Council

By: _____

Title: _____

Date: _____

Construction Employers Association

By: _____

Title: _____

Date: _____

Bricklayers District Council

By: _____

Title: _____

Date: _____

Asbestos Workers #3

By: _____

Cement Masons #404

By: _____

Title: _____

Date: _____

Boilermakers #744

By: _____

Title: _____

Date: _____

Electrical Workers #38

By: _____

Title: _____

Date: _____

**Indiana / Kentucky / Ohio Regional
Council of Carpenters**

By: _____

Title: _____

Date: _____

Laborers #310

By: _____

Title: _____

Date: _____

Teamsters #436

By: _____

Title: _____

Date: _____

Pipefitters #120

Title: _____

Date: _____

Elevator Constructors #17

By: _____

Title: _____

Date: _____

Ironworkers #17

By: _____

Title: _____

Date: _____

Laborers #860

By: _____

Title: _____

Date: _____

Painters District Council

By: _____

Title: _____

Date: _____

Plasterers #80

By: _____

Title: _____

Date: _____

Roofers & Waterproofers #44

By: _____

Title: _____

Date: _____

Plumbers #55

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Sheetmetal Workers #33

ATTACHMENT A

Collective Bargaining Agreement

Expiration Date

[illegible]

ATTACHMENT B

**ACKNOWLEDGMENT OF ASSENT TO THE
COMMUNITY BENEFITS AGREEMENT FOR GARAGE 59
BY AND BETWEEN UNIVERSITY HOSPITAL HEALTH SYSTEM, INC.
AND THE CLEVELAND BUILDING AND CONSTRUCTION TRADES
COUNCIL AND ITS AFFILIATES**

Pursuant to Paragraph B of the Community Benefits Agreement (the "Agreement") for _____ described in the Agreement, the undersigned party hereby agrees that it will comply with and be bound by all of the terms and conditions of the Agreement and agrees to all approved amendments or revisions thereto.

This Letter of Assent shall remain in effect for the duration of the above-referenced Project after which this understanding will automatically terminate without further notice.

For the Contractor (or Subcontractor of whatever tier):

Name of Contractor/Subcontractor: _____

Name and Signature of Authorized Person:

(Print Name) _____

(Title) _____

(Signature) _____

(Phone #) _____

(Date) _____

Summary Report

August 07, 2013 9:09 AM

	Document	Location
Original	UHHS Community Benefits Agreement v3	7711518\3
Revised	UHHS Community Benefits Agreement v4	7711518\4

Change Summary

	Number of Changes	Markup Format
Insertions	21	Sample Text
Deletions	26	
Moved from	0	
Moved to	0	Sample Text
Formatting	0	Sample Text
Total	47	

CLEVELAND BUILDING TRADES REPORT

September 8, 2013

(b) (6), (b) (7)(C)

Meeting called to order 10:00 a.m.

(b) (6), (b) (7)(C) from the American Diabetes Association spoke about how Diabetes affects almost everyone; they have ways to help prevent and cure Diabetes; all available to unions and their families.

(b) (6), (b) (7)(C) 18S was sworn in.

Previous council meeting minutes of August 6, 2013 were read and approved.

REPORTS OF UNIONS:

Bricklayers, Strongsville Giant Eagle will be open to all bidders union and non-union.

Electricians, congratulated all softball teams on Saturday's tournament.

Laborers 310, congratulated the Electricians on tournament win.

Sheet Metal Workers, west side crew meeting tomorrow at 9:00 a.m.

(b) (6), (b) (7)(C) REPORT:

Picnic was huge success; no up-date on UH PLA; need letters to Tri-C in support of pre-apprenticeship program.

(b) (6), (b) (7)(C) met with the people from John Marshall High School; (b) (6), (b) (7)(C) meeting with

Policy Committee meeting at 9:00 a.m.

Christmas luncheon will be a combined event this year.

Perry plant Code of Excellence is still in the making.

OLD BUSINESS:

University Hospitals is reaching out to (b) (6), (b) (7)(C) about a fundraiser for UH (Harley or truck raffle).

NEW BUSINESS:

Scanning Committee made several endorsements of various politicians; endorsements were approved.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

BUILDING LABORERS' AGREEMENT

BUILDING LABORERS'
LOCAL UNION No. 310

CLEVELAND, OHIO

2012 2015

Affiliated with
LABORERS DISTRICT COUNCIL OF OHIO
and
LABORERS INTERNATIONAL UNION
OF NORTH AMERICA

© 2012

5X4

POLICY COMMITTEE MEETING
WEDNESDAY, AUGUST 7, 2013

The CBCTC Policy Committee meeting was called to order on Wednesday, August 7, 2013 by (b) (6), (b) (7)(C) at 9:07 a.m.

The following were in attendance: (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) Pipefitters Local 120, (b) (6), (b) (7)(C), Plumbers Local 55, (b) (6), (b) (7)(C), Cement Masons Local 404, (b) (6), (b) (7)(C) Sheet Metal Workers Local 33, (b) (6), (b) (7)(C) Painters District Council 6 and (b) (6), (b) (7)(C) Ironworkers Local 17.

The minutes of the July 3, 2013 Policy Committee meeting were reviewed. A motion was made, second and carried without dissent to approve the minutes.

A letter from Tri-C was distributed. The letter is intent of the JATC's supporting a partnership with Tri-C.

CBCTC (b) (6), (b) (7)(C) met with Higley concerning CMSD work, Max Hayes and the School of the Arts. Contract language has 400 hours of work per 1 million dollars worth of work on the projects. The trades are urged to supply CMSD graduates for employment on these projects. This should be a graduate of CMSD within the last 5 years (recommended). JATC coordinators should contact (b) (6), (b) (7)(C) of Higley to go over application procedures and time frames.

(b) (6), reported that the UH PLA was finalized for the Garage 59 and Proton Therapy projects. It will be submitted to the National Building Trades ASAP. The Operators have indicated they are not signing the agreement. The Euclid project will be next. Residency will be a topic of discussion on this project.

The Perry Code of Excellence has been approved by the CBCTC Executive Board and the delegates to the CBCTC. It will be submitted to First Energy and Day&Zimmerman for approval. Questions arose regarding members refusing to sign and it was addressed.

(b) (6), (b) (7)(C) was addressed by (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) was upset over the signatory parties of the Cleveland agreement and has engaged (b) (6), (b) (7)(C) into the mix. (b) (6), (b) (7)(C) will meet with (b) (6), (b) (7)(C) today. The intent is not yet known. The information was relayed to Mayor Jackson.

Policy Committee Meeting

August 7, 2013

(b) (6), (b) (7)(C) also spoke to Mayor Jackson regarding (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) CON, (b) (6), (b) (7)(C) and non-union crafts. The Mayor and his staff will be involved and a meeting will be held on Friday at 4:30 p.m. at City Hall. Some contractors have already been contacted.

(b) (6), (b) (7)(C) also met with Cleveland City Council last week including (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) etc. (b) (6), (b) (7)(C) expressed that the CBCTC will engage City Council moving forward. Some council persons had no idea who the CBCTC represents. Some measures may be implemented to inform the CBCTC of upcoming projects in the wards. (b) (6), (b) (7)(C) expressed that collective bargaining agreements should be utilized on city work and council needs to assist in this matter.

Pipefitters Business (b) (6), (b) (7)(C) brought up conversations (b) (6), (b) (7)(C) has had with non-union contractors. The non union contractors are using our members to do their work. General topics of conversation ensued. It has been an issue with certain crafts more than others.

There being no further business to come before the Policy Committee, the meeting adjourned at 10:00 a.m.

Respectfully submitted by,

(b) (6), (b) (7)(C)



William Fadel< fadel.william@gmail.com>

FW: Cornerstone - Fall Issue 2013 - CEA

1 message

(b) (6), (b) (7)(C)@iuoelocal18.org>

Mon, Dec 2, 2013 at 10:18 AM

To: Richard Dalton <rdalton@iuoelocal18.org>, "fadel.william@gmail.com" <fadel.william@gmail.com>

Forwarding per (b) (6), (b) (7)(C)

From (b) (6), (b) (7)(C) CEA [mailto:(b) (6), (b) (7)(C)@ceacisp.org]

Sent: Friday, November 29, 2013 8:01 AM

To: (b) (6), (b) (7)(C)

Subject: Cornerstone - Fall Issue 2013 - CEA



Quarterly Newsletter
Cornerstone

Fall 2013

Annual Meeting & Election of Officers

The 2014 Annual meeting was held on October 29th. (b) (6), (b) (7)(C) and

(b) (6), (b) (7)(C) introduced (b) (6), (b) (7)(C) Donley's Inc., as

(b) (6), (b) (7)(C) Additionally, Members elected (b) (6), (b) (7)(C)

The Great Lakes Construction Co., to the Executive Committee and elected five individuals as at-large

(b) (6), (b) (7)(C)

Ref 1-814

**PROJECT LABOR AGREEMENT FOR
UPPER CHESTER NEIGHBORHOOD OF HOUGH
BY AND BETWEEN
THE FINCH GROUP
AND**

**THE CLEVELAND BUILDING AND CONSTRUCTION TRADES
COUNCIL AND ITS AFFILIATES**

INTRODUCTION AND SCOPE

- A. This Project Labor Agreement ("Agreement") is entered into this ___ day of January, 2014, by and between UCAA Limited, an affiliate of The Finch Group, its successors or assigns (the "Developer"), and the Cleveland Building and Construction Trades Council ("CBCTC"), acting on its own behalf and on behalf of its affiliates (collectively, "Unions"), with respect to the construction of Part 2 and Part 3 of the Upper Chester Neighborhood Redevelopment in Cleveland, Ohio ("Project"), as shown on the attached Development Site Plan, Parts 2 & 3, including the parking garage and all future interior retail build-outs except as provided in Paragraph K(1).
- B. The term "Contractors" shall collectively refer to and include all employers and entities, including but not limited to, construction contractors and subcontractors of whatever tier engaged only in on-site construction work with respect to the Project within the scope of this Agreement. On-site construction work shall include: (1) demolition, excavation, and other site preparation work; (2) the off-site prefabrication of any building materials, systems, signage, displays, and/or components traditionally performed on-site; (3) the transportation to the site of only ready mix concrete, aggregate, top soil, and fill; and (4) only the transportation off-site of demolition and excavation materials. This Agreement does not apply to work not owned or controlled by the Developer, provided, however, that all on-site work for the Project covered in a participating Union's collective bargaining agreement shall be protected by this Agreement to the same degree and scope as in the collective bargaining agreement listed in Attachment A. The Developer agrees that it shall not self-perform on-site construction work with respect to the Project with its own employees.

The Contractors who enter into contracts with the Developer for the Project or Contractors (of any tier) who enter into contracts with Contractors for the Project, shall be bound to each and every provision of this Agreement to the same extent and effect as if the Contractor was an original party to this Agreement. All Contractors shall acknowledge, in writing, the acceptance of this Agreement by executing the Acknowledgement, which is attached hereto as Attachment B. All Contractors acknowledge that the acceptance of a Contract of any tier to perform Work for the Project is an acceptance of the terms of this Agreement.

B.1. Items specifically excluded from the scope of this Agreement are:

(a) Work by non-manual or professional employees, including but not limited to the Architect, Construction Manager, consultants, superintendents, supervisors (except foremen and general foremen), engineers, inspectors, quality control personnel, quality assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, emergency medical and first-aid technicians, and other professional, engineering, administrative, and management employees;

(b) Testing of equipment and machinery in the care, custody, and control of companies other than Contractors;

(c) Work that is not within the recognized jurisdiction of the Unions;

(d) Any work performed on, near, or leading to or into the Project site by governmental bodies and/or utilities or railroads;

(e) Inspection, commissioning, testing and/or balancing of any building systems except for the testing and balancing of HVAC systems; and

(f) To the extent a warranty for equipment or a system will be voided or unavailable, an applicable regulation of a governing body will be violated, or a security requirement of the Developer will not be met by the delivery or installation of such equipment or system by a union Contractor, the Developer will not be required to use a Union Contractor to perform such work. Before using a non-union contractor to perform such work, the Developer will discuss the work to be performed with the CBCTC, ask the CBCTC to identify Union contractors who can perform the work on a cost and quality competitive basis and meet the Developer's concerns, and select in good faith the contractor which the Developer determines is best suited for the Project, which shall be subject to the dispute resolution provisions of this Agreement.

CONTRACTORS

C. The Developer, the Contractors, and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craft workers for the construction of the Project.

D. To maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement and to avoid workplace disruptions that may be caused by union and nonunion workers employed on the same jobsite, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise.

- E. Where there is a conflict, the terms and conditions of this Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Paragraphs K, L, M, M.1 and M.2, which shall apply to such work.
- F. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.
- G. Liability of any Contractor and the liability of the Unions shall be several and not joint.

COMMUNITY BENEFITS

- H. A Memorandum of Understanding Regarding Community Benefits and Inclusion (the "MoU") was executed on February 26, 2013 with a goal of reframing the public discourse on economic development in Cleveland to encourage collaboration to fuel economic growth, harness that growth to create a more equitable and inclusive local economy and create shared prosperity. (A copy of the MoU is attached hereto as Attachment C.) In support of the MoU, the Project shall be performed subject to the following:
 - 1) The Developer shall engage the Construction Diversity & Inclusion Committee or its designee to audit and report to the Developer compliance with the obligations set forth below, and the Developer shall require the Contractors to provide the Committee or its designee with certified monthly payroll reports and any other documentation necessary to verify compliance with the obligations set forth in this Paragraph H.
 - 2) The Contractors employed on the Projects shall, in filling job vacancies, utilize the registration facilities and referral systems operated by the Unions in accordance with the provisions of the applicable Federal and State laws. In addition to the other requirements set forth in this Agreement, the selection of applicants for work on the Project shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements.
 - 3) Recognizing that the Unions have no control over the Developer's selection of Contractors, the Unions acknowledge and support the Developer's diversity goals of 15% Minority Business Enterprise, 7% Female Business Enterprise, and 8% Small Business Enterprise participation on this Project. The Contractor will use commercially reasonable efforts to obtain bids from and recommend the award of trade contracts for fifteen percent (15%) of the combined aggregate value of its Cost of the Work of the Project and related vendor purchases to qualified State of Ohio, Cuyahoga County, or City of Cleveland certified MBE

firms, seven percent (7%) of the combined aggregate value of its Cost of the Work of the Project and related vendor purchases to qualified State of Ohio, Cuyahoga County, or City of Cleveland certified FBE firms, and eight percent (8%) of the combined aggregate value of its Cost of the Work of the Project to qualified State of Ohio, Cuyahoga County, or City of Cleveland certified SBE firms in compliance with the terms and conditions of the Owner's MBE/FBE/SBE and Workforce Utilization Plan.

4) The Unions, Contractors and Subcontractors acknowledge and support the Developer's desire to provide opportunity to small disadvantaged business enterprises, and agree to recognize Mentor-Protégé Joint Venture Partnerships between certified small disadvantaged business enterprises (union or non-union) and Union Contractors that are similar to the Contractors Assistance Association Mentor-Protégé Program (hereinafter "Bona Fide Mentor-Protégé Program"). Notwithstanding any other provision of this Agreement, the joint venture entity and/or Mentor Contractor will be required to be or become signatory to the appropriate collective bargaining agreement as set forth in "Union Recognition and Subcontracting" provisions below.

5) In accordance with the MoU, the Developer shall:

(a) incorporate the following into project bid specification documents and contracts for Contractors at every tier:

- (1) workforce reporting (as set forth in Paragraph H.1 of this Agreement) and Workforce Goals (as set forth in Paragraph H.6 of this Agreement) by each Contractor, subject to the Developer's contractual remedies;
- (2) Contractor and Sub-Contractor participation in a Bona Fide Mentor-Protégé Program, subject to the Developer's contractual remedies; and

(b) take reasonable steps to relax retainage and performance bonding requirements for the Mentor-Protégé Joint Venture Partnership and the MBE/FBE/SBE Contractors.

6) In accordance with the MoU and the Fannie M. Lewis Cleveland Resident Employment Law (the "Fannie Lewis Law"), the Unions shall use good faith efforts to support Contractors' maximization of local workers who reside in the city where the Project is located to meet or exceed the Project goals of having residents of the City of Cleveland perform 20% of the total Construction Worker Hours for the Project and of having Low Income Persons perform 4% of the total Construction Worker Hours for the Project as those terms are defined in the Fannie Lewis Law (hereinafter collectively referred to as "Workforce Goals"). Apprentice hours worked shall be tracked by the Contractor and count toward the requirement to hire 4% low income persons.

7) Good faith efforts are defined by the Unions' authentic and engaged efforts with all Contractors, the Developer, and the Construction Diversity & Inclusion Committee or its designee to meet or exceed the Workforce Goals. Such good faith efforts will also include, if necessary, requesting assistance from other local unions or municipal agencies to recruit sufficiently skilled tradesmen and craftsmen to meet the Workforce Goals. The Unions shall use good faith efforts to work, coordinate, and cooperate with any and all bona fide pre-apprenticeship programs identified in the MoU, together with the partnership between the Urban League of Greater Cleveland and Cuyahoga Community College Adult Pre-Apprenticeship Program, the Bricklayers and Allied Craftworkers Pre-Apprenticeship Program, the Cement Masons Local 404 Pre-Apprenticeship Program in Cleveland, Ohio, and the Pre-Apprenticeship programs offered by the Job Corps of Cleveland, Max Hayes High School, the Carpenters' Union and Helmets to Hardhats Program as preferred first-source referral sources for new apprentices to assist the Developer to achieve the Workforce Goals for the Project.

8) Contractors and Unions shall provide eligible graduates of the aforesaid pre-apprenticeship programs opportunities for apprenticeships as required to meet the Workforce Goals.

9) When a Contractor's request for employees to meet the Workforce Goals cannot be or is not being met, the Developer shall have the right to direct the Contractor to employ new apprentices who have completed one of the pre-apprenticeship programs set forth above to meet the Developer's goals. With respect to each construction trade working on the Project, Contractors shall utilize apprentices in amounts on a per-trade basis specified in each applicable collective bargaining agreement. The Contractors, however, shall retain the right to reject in good faith any applicant for employment. The failure to meet the stated goals will not be considered a breach of this Agreement.

10) The Unions agree to comply with and fully cooperate with the Contractors in order to meet or exceed the Diversity and Workforce Goals. If a Contractor's existing workforce does not satisfy the Workforce Goals, the Contractor shall send a written request (via email or similar means) for a referral of City of Cleveland residents or low income persons to the appropriate craft union with whom the Contractor is signatory. The Unions shall use good faith efforts to comply with the written request within 72 hours of its receipt.

DRUG FREE WORKSITE

- I. The Parties agree that the Project will be a "drug-free" worksite. The Unions agree to comply with the Construction Industry Substance Abuse Program, a copy of which is attached hereto and incorporated herein as Attachment D. The Unions further agree to cooperate with the Developer in its efforts to create a drug and alcohol free workplace.

HELMETS TO HARDHATS

- J. The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment ("Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties. The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

UNION RECOGNITION AND SUBCONTRACTING

- K. The Developer and the Unions shall require that all work by Contractors within the scope of this Agreement be performed by Contractors who are or become signatory to collective bargaining agreements with one or more appropriate craft unions listed in Attachment A. The Contractors shall confirm that this condition has been satisfied prior to the commencement of that Contractor's work on the Project.

1) It is agreed that because of financial limitations of prospective retail tenants, that the build-out of any retail space for any retail tenant occupying less than 1500 net leasable square feet of space shall be exempt from this requirement to use Union Labor, so long as the work is not performed by or under the direction or control of the Developer. Before using a non-union contractor to perform such work, the Developer will encourage tenants to discuss the work to be performed with the CBCTC, ask the CBCTC to identify Union contractors who can perform the work on a cost and quality competitive basis and meet the tenant's concerns, and select in good faith the contractor which the tenant determines is best suited for the work.

- L. Any Contractor who is not already signatory to a collective bargaining agreement with the appropriate craft union signatory to this Agreement, and chooses not to become signatory for the duration of the collective bargaining agreement, hereby agrees to become signatory to the collective bargaining agreement but only for work performed on the Project or covered within the scope of the Project. For any Contractor that is not signatory to a collective bargaining agreement with the appropriate craft union(s), upon request from the appropriate craft union(s), the Employer immediately shall complete and sign Attachment E ("Letter of Assent") attached to this Agreement.
- M. For any Contractor who signs a Letter of Assent (Attachment E) with a Union that does not operate an exclusive referral system pursuant to its customary collective bargaining agreement, that Contractor may continue to employ a maximum number

of five "core" employees on this Construction project provided that those "core" employees:

1. possess any license required by State or Federal law for the Project work to be performed,
2. have worked a total of at least one thousand (1000) hours in the construction craft during the prior three (3) years,
3. were on the Contractor's active payroll for at least sixty (60) out of the one hundred eighty (180) calendar days prior to the contract award, **and**
4. have the ability to perform safely the basic functions of the applicable craft.

Core employees who meet all of the four aforementioned qualifications will be permitted to work on the Project as follows: A Contractor may employ a "core" employee and the Union will refer one of its existing members on an alternating basis, with the Contractor being permitted to choose its "core" employee first, up to a maximum of five "core" employees. After a total of ten employees have been hired (five "core" employees and five Union referrals), all additional employees will be Union referrals. For the duration of the Contractor's work on the Project, the ratio of "core" employees to Union referrals shall be maintained. When the Contractor's workforce is reduced, employees shall be reduced in the same ratio as was applied in the initial hiring. Any Contractor attempting to circumvent the hiring provisions set forth herein by misclassifying any of its employees as supervisors or foremen shall forfeit their right to employ "core" employees on this project. Any "core" employee working on the Project will be covered by the union security provision of the customary collective bargaining agreement of the affected craft Union with whom the Contractor is signing a Letter of Assent.

WORK STOPPAGES AND LOCKOUTS

- N. During the term of this Agreement there shall be no strikes, sympathy strikes, jurisdictional strikes, picketing, work stoppages, slowdowns, or other disruptive activity for any reason by the Unions or by any employee for any reason including the performance of any work outside the scope of this Agreement, and there shall be no lockout by the Developer or any Contractor.
- O. If wage negotiations are scheduled during the course of the Project, the Contractors agree to abide by all the terms and conditions as may be negotiated by the Unions and their respective employer association and the Contractors agree to pay said wages to all employees working and employed by the Contractor and its subcontractors for the work, retroactive to the date said increase and wage adjustments become effective. Said payments shall be made within twenty-one (21) days of the date of the new collective bargaining agreement. The Unions shall permit all employees to continue to work for the Contractors and their subcontractors during the pendency of negotiations, and the Unions will further

agree that there will be no work stoppages, strikes or interferences with the work during the course of said negotiations.

- P. The Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing, or other disruptive activity at the Project and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities that interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge by the Contractor. If justifiably discharged for any of the foregoing reasons, the employee shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.

EMERGENCY INJUNCTIVE RELIEF

- Q. The parties hereto agree that time is of the essence to this Agreement and to all contracts relating to the construction of the Project. The parties further agree that any delay due to any disruption of or interference with any activity relating to the construction of the Project will result in irreparable harm for which there is no adequate remedy at law and that, in such case, an injunction should issue to enjoin any such disruption or interference and to compel resolution of such dispute pursuant to the Agreement's grievance and arbitration procedure. All parties agree that, in the event that a Union initiates or participates in a work stoppage, strike, picketing or other disruptive activity in violation of Paragraphs N or P, or recognizes or supports the work stoppage, strike, picketing, or disruptive activity of another Union that is in violation of Paragraphs N or P, the Developer or Contractor will have the right to seek an immediate injunction from the appropriate court in Cuyahoga County, Ohio to enjoin such conduct.
- R. In the event of an alleged violation of the contractual commitments set forth in Paragraphs K or L of this Agreement, the aggrieved party shall not be required to resort to the normal settlement procedures. Instead, the aggrieved party shall have the right to enforce these commitments by seeking an immediate injunction from the appropriate court in Cuyahoga County, Ohio to enjoin such conduct. The Parties hereby agree that in the case of a violation of Paragraphs K or L of this Agreement, the aggrieved party will have no adequate remedy at law, cannot be made whole by money damages, and will be irreparably harmed by the conduct. Furthermore, once the injunction has been issued, the aggrieved party shall retain the right to full legal and equitable relief, including appropriate financial damages against any violating party. Should a Contractor fail to pay any wages and/or employee benefits, the Contractor shall also be liable for interest, reasonable attorney fees and court costs, in addition to other remedies the Union and/or its related fringe benefit funds may have.

WAGES AND FRINGE BENEFITS

- S. Except as otherwise provided in this Agreement, the wage and fringe benefit requirements in this Agreement shall apply to all employees employed by any Contractor of any tier, or any person who performs any portion of the construction

work within the scope of this Agreement. Except as otherwise provided in this Agreement, all Contractors shall comply with the wage, benefit, trust fund and industry program requirements set forth in the applicable collective bargaining agreement(s) listed in Attachment A. While working on this Project, the collective bargaining agreements listed in Attachment A shall supersede any other collective bargaining agreements to which a Contractor may be signatory. The failure of a Contractor to comply with the provisions of this Article shall be considered a material breach for which the Developer may terminate the Contractor's contract.

- T. With respect only to the work performed on Residential Portion of the Project, the signatory Unions shall adjust their Attachment A collective bargaining agreements to provide for the equivalent of a twenty percent (20%) reduction in the payroll costs attributable to the wage and benefit rates for the trade. This reduction may be accomplished by any lawful method including, but not limited to, direct payroll reductions, targeting efforts in accordance with existing targeting programs, work rule adjustments, apprentice ratios, or any combination thereof, within the Union's sole discretion.

(a) The Residential Portion of the project is any construction from the second floor up including the roof areas. This elevation is defined as the top of steel supporting the second floor. This elevation line would apply to the exterior elevations and any mechanical and electrical piping and ductwork.

(b) All other construction included in the scope of this agreement will be performed at the negotiated wage rates in the applicable Collective Bargaining Agreements.

- U. If a Fringe Benefit Trust Fund or a Union provides the Developer with written notice that one of the Contractors is delinquent in making benefit contributions for a period of at least fifteen (15) days after said contributions are payable for work performed on the Project, the Developer shall withhold the amount of any work-in-progress payments owed to said Contractor in an amount which is equal to or greater than the amount of said delinquency until the Fund or Union notifies the Developer that the benefit contributions have been paid and made current. The Developer's obligation is limited only to the amount of unpaid work-in-progress payments owed to the Contractor at the time the Fund or Union notifies it of any delinquent contributions, and the Developer assumes no liability for payments of delinquent benefit contributions. Any good faith dispute between the Fringe Benefit Trust Fund and a Contractor over the amount of money owed to the fund are not subject to the provisions of this Paragraph. The Fund or Union which asserts a deficiency pursuant to this Paragraph, agrees to hold harmless and indemnify the Developer from any and all liability, costs, and expenses incurred by the Developer which arises in any fashion from the asserted deficiency and the Developer's actions taken in response to said assertion.

JURISDICTIONAL DISPUTES

- V. Each direct-hire Contractor of any tier shall conduct a jurisdictional pre-job meeting prior to the commencement of the work for the purpose of discussing the scope and

schedule of the work and intended work assignments by the Unions and to confirm that the Contractor is signatory to the appropriate collective bargaining agreement with one or more craft unions listed in Attachment A. The Developer's representative shall have the right to participate in such meetings. Except in emergency situations, no Contractor may commence work without conducting the jurisdictional pre-job meeting. Following the pre-job meeting, crafts shall be given the opportunity to submit evidence in support of a claim to the work. The Contractor will make its final assignments to a particular Union or Unions in writing prior to the commencement of the work. The initial and final assignments are the sole responsibility of the Contractor performing the work involved.

- W. All work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.
- X. All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and Contractors shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Union parties to this Agreement.
- Y. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

DISPUTES AND GRIEVANCES

- Z. Jurisdictional disputes shall be resolved in the manner provided above in this Agreement. Disputes arising under the terms of an individual Union's collective bargaining agreement must be resolved in the manner provided under the individual Union's collective bargaining agreement. All other disputes arising under the terms and/or application of this Agreement that require an interpretation of this Agreement, and which grievance is (a) not jurisdictional, (b) not covered by a Union's collective bargaining agreement, and (c) not covered by the emergency injunction provisions of Paragraphs Q or R shall be resolved as set forth below.
- AA. Any question or dispute arising out of and during the term of this Agreement (other than those described above) shall be considered a grievance and subject to resolution under the following procedures:
 - 1) (a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor and the Developer shall meet

and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Developer) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Union(s) or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

2) The International Union Representative and the involved Contractor shall meet within seven (7) working days of the referral of a dispute of this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

3) (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the American Arbitration Association to provide them with a list of arbitrators from which the Arbitrator shall be selected. The rules of the American Arbitration Association shall govern the conduct of the arbitration hearing. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

4) The Developer shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

LEGALITY

It is not the intent of the parties to this Agreement to violate any Federal, State, or local laws governing the subject matter contained herein, and any final determination that any

provision of this Agreement violates any law or is otherwise not binding and enforceable shall have no effect on the validity of the remaining provisions of the Agreement. All parties who are signatory to the terms of this Agreement agree that, if any of the provisions contained herein is finally held or determined to be illegal, unenforceable, not binding, or void by a court of final and competent jurisdiction, an effort will be made by the parties hereto to promptly enter into negotiations concerning the clauses affected by such decision for the purpose of achieving conformity with the requirements of any applicable law or conflicting law so violated.

AMENDMENT

No alterations, amendments, or modifications hereof shall be valid unless set forth in an instrument in writing executed by the parties with the same formality as this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified, or abandoned, in whole or in part, except by an instrument in writing executed by the parties, and no subsequent oral agreement shall have any validity whatsoever. The Developer shall furnish sufficient copies of such amendments or modifications to the other parties.

TERM OF AGREEMENT

This Agreement shall be effective as of the date hereinabove written, and shall remain in effect with respect to each Contractor until the date of final completion of that Contractor's work. Once the Developer accepts an area or system within the Project following completion of the work applicable thereto except for the performance of punch list work, the parties agree that the Developer is authorized to secure and occupy the area or use the system as the Developer deems appropriate without objection from any of the parties hereto.

PROJECT ACCESS

The Developer and each affected Contractor shall afford reasonable access to the Project site to duly authorized representatives of the Unions signatory to this Agreement, provided they do not interfere with the work of employees or the delivery of supplies, equipment, tools or materials to the Project, and provided they comply with job and safety rules established and posted by the Contractor(s) and/or the Developer. All visitors must sign in at the on-site Project office.

MONTHLY MEETINGS

In an effort to avoid unnecessary disputes, maintain harmony, and address any unanticipated matters related to this Agreement which may arise over the course of the Project, the Developer (or its nominee) and the Contractor shall convene, on a monthly basis, a meeting of all Contractors and Unions working or scheduled to work on the Project. The meetings shall provide a forum to discuss and resolve, in good faith, any present or anticipated issue related to this Agreement and endeavor to resolve same without resort to the formal dispute resolution procedures of this Agreement. Goals of this meeting will be to avoid any jurisdictional disputes between the Unions, to project the need for labor and to discuss any related hiring issues related to minorities, females, apprentices and Cleveland residents.

SIGNATURES

The parties to this Agreement need not all sign on the same page. Signatures on separate pages and executed at different times will not affect the validity of the Agreement. Original signatures and signatures provided by facsimile are equally valid.

**UCAA Limited, an affiliate of The
Finch Group**

By: _____

Title: _____

Date: _____

**Cleveland Building & Construction
Trades Council**

By: _____

Title: _____

Date: _____

Asbestos Workers #3

By: _____

Title: _____

Date: _____

Bricklayers District Council

By: _____

Title: _____

Date: _____

Boilermakers #744

By: _____

Title: _____

Date: _____

Cement Masons #404

By: _____

Title: _____

Date: _____

Electrical Works #38

By: _____

Title: _____

Date: _____

Elevator Constructors #17

By: _____

Title: _____

Date: _____

**Indiana / Kentucky / Ohio Regional
Council of Carpenters**

By: _____

Title: _____

Date: _____

Ironworkers #17

By: _____

Title: _____

Date: _____

Laborers #310

By: _____

Title: _____

Date: _____

Teamster #436

By: _____

Title: _____

Date: _____

Pipefitters #120

By: _____

Title: _____

Date: _____

Plumbers #55

By: _____

Title: _____

Date: _____

Sheetmetal Workers #33

By: _____

Title: _____

Date: _____

Tile Layers #36

By: _____

Title: _____

Date: _____

Laborers #860

By: _____

Title: _____

Date: _____

Painters District Council

By: _____

Title: _____

Date: _____

Plasterers #80

By: _____

Title: _____

Date: _____

Roofers & Waterproofers #44

By: _____

Title: _____

Date: _____

Glazers #181

By: _____

Title: _____

Date: _____

ATTACHMENT A

Collective Bargaining Agreement

Applicable Apprentice Ratio

Expiration Date

— 4 —

ATTACHMENT B

**ACKNOWLEDGMENT OF ASSENT TO THE
COMMUNITY BENEFITS AGREEMENT FOR UPPER CHESTER
NEIGHBORHOOD OF HOUGH
BY AND BETWEEN THE FINCH GROUP
AND THE CLEVELAND BUILDING AND CONSTRUCTION TRADES COUNCIL
AND ITS AFFILIATES**

Pursuant to Paragraph B of the Community Benefits Agreement (the "Agreement") for Upper Chester Neighborhood of Hough, the undersigned party hereby agrees that it will comply with and be bound by all of the terms and conditions of the Agreement and agrees to all approved amendments or revisions thereto.

This Letter of Assent shall remain in effect for the duration of the above-referenced Project after which this understanding will automatically terminate without further notice.

For the Contractor (or Subcontractor of whatever tier):

Name of Contractor/Subcontractor: _____

Name and Signature of Authorized Person:

(Print Name) _____

(Title) _____

(Signature) _____

(Phone #) _____

(Date) _____

ATTACHMENT D

Construction Industry Substance Abuse Program ("CISAP")

ATTACHMENT E

LETTER OF ASSENT (PROJECT ONLY)

In consideration of the benefits to be derived and other good and valuable consideration, the undersigned Employer, does hereby become signatory to the standard industry collective bargaining agreement(s) with the following signatory Union(s) for work performed on this Project or within the scope of this Project:

1. _____
2. _____
3. _____

Signed on this _____ day of _____, 20__.

Name of Company

By: _____
Typed or printed Position

Signature

Address

Phone: _____ Fax: _____

E-mail: _____

BWC No. _____ Federal ID No. _____

Name of Union

By: _____
Typed or printed Position

Signature

Address

Phone: _____ Fax: _____

E-mail: _____

Name of Union

By: _____
Typed or printed

Position

Signature

Address

Phone: _____ Fax: _____

E-mail: _____

Name of Union

By: _____
Typed or printed

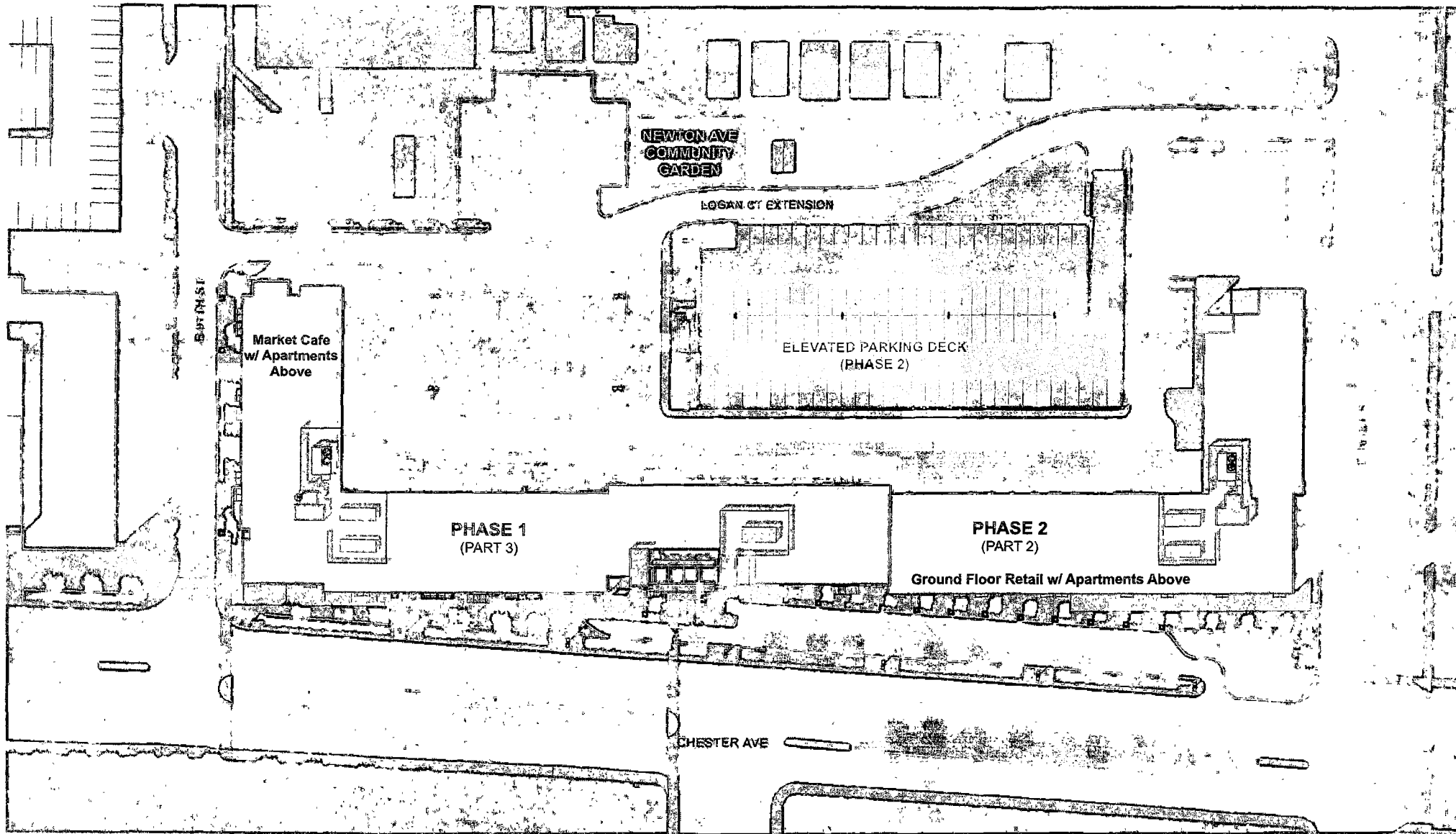
Position

Signature

Address

Phone: _____ Fax: _____

E-mail: _____



DEVELOPMENT SITE PLAN PARTS 2 & 3

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Reed
Leskosky



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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

January 16, 2014

WILLIAM FADEL
GENERAL COUNSEL
INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 18 (AFL-CIO)
3515 PROSPECT AVE E
CLEVELAND, OH 44115-2648

Re: Cleveland Building & Construction Trades
Council (CBCTC)
Case 08-CA-111393

Construction Employers Association (CEA)
Case 08-CA-111394

Goettle Equipment Company
Case 08-CA-111395

The Ruhlin Company
Case 08-CA-111397

University Hospitals Health Systems Inc.
(UH)
Case 08-CA-111398

Independence Excavating, Inc.
Case 08-CA-111399

Dear Mr. Fadel:

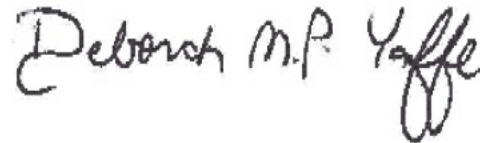
Receipt of your appeal in the above matter is acknowledged. Upon receipt of the investigative file from the Regional Director, the appeal will be assigned for processing. You may be assured your appeal will receive careful consideration and that you and all interested

parties will be advised, as soon as possible, of our decision.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

By:



Deborah M.P. Yaffe, Director
Office of Appeals

cc: FREDERICK J. CALATRELLO
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
1240 E 9TH ST STE 1695
CLEVELAND, OH 44199-2086

FRANK W. BUCK, ESQ.
LITTLER MENDELSON, P.C.
1100 SUPERIOR AVE E 20TH FL
CLEVELAND, OH 44114-2518

(b) (6), (b) (7)(C)
[REDACTED]
CLEVELAND BUILDING AND
CONSTRUCTION TRADES COUNCIL
3250 EUCLID AVE
CLEVELAND, OH 44115-2529

(b) (6), (b) (7)(C)
CONSTRUCTION EMPLOYERS
ASSOCIATION
950 KEYNOTE CIR STE 10
CLEVELAND, OH 44131-1802

(b) (6), (b) (7)(C)
GOLDSTEIN GRAGEL LLC
THE LEADER BUILDING
526 SUPERIOR AVE E STE 1040
CLEVELAND, OH 44114-1902

JAMES A. MILLS, ESQ.
DENLINGER, ROSENTHAL &
GREENBERG
425 WALNUT ST STE 1800
CINCINNATI, OH 45202-3948

JOYCE GOLDSTEIN, ESQ.
GOLDSTEIN GRAGEL LLC
THE LEADER BUILDING
526 SUPERIOR AVE E STE 1040
CLEVELAND, OH 44114-1401

(b) (6), (b) (7)(C)
GOETTLE EQUIPMENT COMPANY
12071 HAMILTON AVE
CINCINNATI, OH 45231-1032

(b) (6), (b) (7)(C)

INDEPENDENCE EXCAVATING, INC.
5720 SCHAAF RD
INDEPENDENCE, OH 44131-1396

(b) (6), (b) (7)(C)

STRUCTURAL GROUP, G.M.
THE RUHLIN COMPANY
6931 RIDGE RD
PO BOX 290
SHARON CENTER, OH 44274

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

UNIVERSITY HOSPITALS HEALTH
SYSTEMS, INC. (UH)
11100 EUCLID AVE
CLEVELAND, OH 44106

RAYMOND KRNCVIC, ESQ.
3605 WARRENSVILLE CENTER RD
SHAKER HEIGHTS, OH 44122

mjb



International Union of Operating Engineers

LOCAL 18 AND ITS BRANCHES • SERVING OHIO

THIRTY-FIVE FIFTEEN PROSPECT AVENUE • CLEVELAND, OHIO 44115

(216) 432-3138

FAX: (216) 432-0370

William I. Fadel
General Counsel

January 21, 2014

via United Parcel Service

Mr. Richard Griffin
General Counsel
National Labor Relations Board
Office of Appeals
1099 14th Street, NW
Washington, DC 20570-0001


In Re: Cleveland Building & Construction Trades Council 08-CA-111393; Construction Employers Association 08-CA-111394; Goettle Equipment Co. 08-CA-111395; The Ruhlin Co. 08-CA-111397; University Hospitals Health Systems Inc. 08-CA-111398; Independence Excavating Inc. 08-CA-111399

Dear Mr. Griffin:

Enclosed herein, please find the International Union of Operating Engineers Local 18 Motion to Correct Brief and Supplemental Brief in the above captioned matters. A copy of the same is also served upon Frederick Calatrello, Regional Director, Region 8.

Thank you for your cooperation in this matter.

Sincerely yours,



William I. Fadel

WIF (b) (6), (b) (7)(C)

Enclosure

C: Mr. Frederick Calatrello

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**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18

Charging Party/Appellant

vs.

Cleveland Building Construction Trades Council (CBT)
08-CA-111393;

Construction Employers Association (CEA)
08-CA-111394;

Goettle Equipment Co.
08-CA-111395;

The Ruhlin Company
08-CA-111897;

University Hospitals Health Systems Inc. (UH)
08-CA-111398;

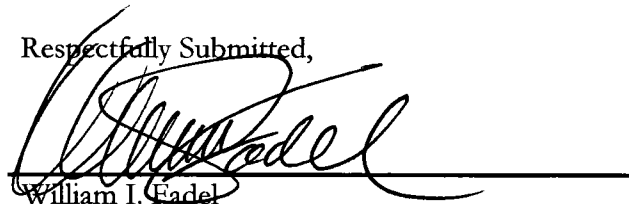
Independence Excavating, Inc.
08-CA-111399

Respondents/Appellees

MOTION TO CORRECT BRIEF AND SUPPLEMENTAL BRIEF

Now comes Charging Party/Appellant, International Union of Operating Engineers Local 18 by and through the undersigned Counsel, and hereby moves to correct reference in its Appeal brief and moves to supplement its Appeal.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'William I. Fadel', is written over a horizontal line.

William I. Fadel
Counsel for the Appellant
International Union of Operating Engineers
Local 18
3515 Prospect Avenue
Cleveland, Ohio 44115
(216) 432-3138 (Telephone)
(216) 432-0370 (Facsimile)
fadel.william@gmail.com

MOTION TO CORRECT BRIEF

On page 10 of Appellants brief in support of its Appeal Appellant made reference to Exhibit G paragraph O. The reference should be corrected as Exhibit G, paragraph S. While the offending language was in the UH PLA Exhibit C paragraph O it was moved to paragraph S in Exhibit G in the Upper Chester PLA.

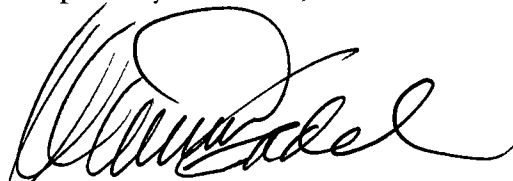
MOTION TO SUPPLEMENT APPEAL AND BRIEF IN SUPPORT

In dismissing Appellant's Charge the Regional Director found that "the evidence showed CBT is not an employer under the Act, but a labor organization that employs two individuals...thus under the Act CBT is not a statutory employer...[and] that the alleged conduct was performed by CBT in its capacity as a labor organization, not as an employer."

If indeed the CBT is a labor organization, as reasoned by the Regional Director, then it owed the duty of fair representation to Local 18, and its members, which duty was breached when it excluded Local 18 from the University Hospital project and the subsequent Upper Chester PLA. In so concluding the Regional Director should have, therefore, issued a Complaint charging the CBT with violating its duty of fair representation that it owed to Local 18 and its members.

The Appellant respectfully requests that the Board remand the matter back to the Region directing the Regional Director to issue a Complaint against the CBT for breaching its duty of fair representation to Local 18 and its members.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'William I. Fadel', written over a horizontal line.

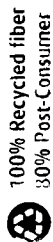
William I. Fadel
Counsel for the Appellant
International Union of Operating Engineers
Local 18
3515 Prospect Avenue
Cleveland, Ohio 44115
(216) 432-3138 (Telephone)
(216) 432-0370 (Facsimile)
fadel.william@gmail.com

CERTIFICATE OF SERVICE

The original of this Appellants Motion to Correct Brief and Supplemental Brief was served upon the General Counsel, Office of Appeals National Labor Relations Board, 1099 14th Street, NW, Washington, DC 20570-0001, and a copy upon Frederick Calatrello, Regional Director Region 8, 1240 E. 9th Street, Suite 1695, Cleveland, Ohio 44199-2086 by United Parcel Service this 21st day of January 2014.

A handwritten signature in black ink, appearing to read 'William I. Fadel', is written over a horizontal line.

William I. Fadel
Counsel for the Appellant
International Union of Operating Engineers
Local 18
3515 Prospect Avenue
Cleveland, Ohio 44115
(216) 432-3138 (Telephone)
(216) 432-0370 (Facsimile)
fadel.william@gmail.com



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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

June 6, 2014

WILLIAM FADEL
GENERAL COUNSEL
INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 18 (AFL-CIO)
3515 PROSPECT AVE E
CLEVELAND, OH 44115-2648

Re: Cleveland Building & Construction Trades
Council (CBCTC)
Case 08-CA-111393

Construction Employers Association (CEA)
Case 08-CA-111394

Goettle Equipment Company
Case 08-CA-111395

The Ruhlin Company
Case 08-CA-111397

University Hospitals Health Systems Inc.
(UH)
Case 08-CA-111398

Independence Excavating, Inc.
Case 08-CA-111399

Dear Mr. Fadel:

This Office has carefully considered the appeal. We agree with the Regional Director's decision and deny the appeal substantially for the reasons in the Regional Director's letter of December 27, 2013.

Contrary to your appeal, the evidence fails to establish that the Cleveland Building & Construction Trades Council (CBCTC) is an Employer under Section 2(2) of the National Labor Relations Act (the Act). Rather, the CBCTC does not employ any statutory employees under the Act and appears to be a representative of labor organizations, which includes Local 18. To the extent that you allege that the CBCTC breached its duty of fair representation, the instant charge

did not allege any violation of Section 8(b)(1)(A) of the Act. Thus, since such an allegation was not investigated by the Regional Office, we have no authority to review that allegation on appeal. The Union may file a new charge on this matter, but such a charge would have to satisfy the filing requirements set forth in Section 10(b) of the Act.

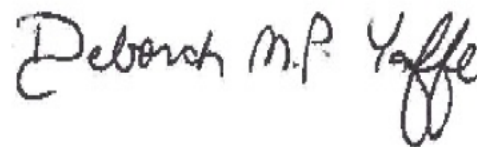
With regard to the issue whether the proposed project labor agreement (PLA) violated the Act, our review did not establish that a violation occurred. In this regard, the parties have agreed to remove the allegedly unlawful exclusionary language from the proposed Garage 59 PLA. Furthermore, the evidence fails to show that the proposed PLA, which contained the alleged unlawful clause, was signed or executed by the parties.

Finally, to the extent that you are alleging that the Upper Chester PLA is unlawful, this was not alleged in the charges and not investigated by the Regional Office. As noted, we do not have the authority to review matters that have not been charged or investigated by the Regional Office. Accordingly, further proceedings are unwarranted.

Sincerely,

Jennifer Abruzzo
Deputy General Counsel

By:



Deborah M.P. Yaffe, Director
Office of Appeals

cc: ALLEN BINSTOCK
REGIONAL DIRECTOR
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